



APPENDIX

TO THE

LONDON MAGAZINE.

MDCCXXXVI.

Conclusion of the PROCEEDINGS and DEBATES in the *last Session of PARLIAMENT*; continued from Page 683.

Reply on the MORTMAIN Bill.

Y Lords, that our Ancestors had many and strong Reasons for preventing the Alienation of Lands in Mortmain, is apparent from the great Care that was taken from Time to Time, to prevent all the Artifices contrived for evading the established Laws of the Kingdom; for no sooner was any new Artifice discovered, than a new Law was made for preventing it in Time to come. What particular Reasons they had, besides those we now have, are not of any Significancy in the present Question; but if it were necessary I could shew, that the particular Reasons mentioned could never have been sufficient for such a general Prohibition as we find established by our Ancestors, if they had not likewise had under their Consideration those general Reasons which now are, and always have been good Reasons against admitting of such Alienations. I mean those Reasons which are founded upon the Security, the Aggrandizement, and the Happiness of the Commonwealth in general.

With respect to the Security of the Kingdom, it is certain that this Nation, as well as every other Nation, has always owed its Security against foreign Invasions chiefly to the landed Men of the Country, who must necessarily be more zealous in the Defence

of their Country, than Persons possessed of any other sort of Property, because the Lands are always seized upon by the Conqueror; whereas with regard to those who are possessed of a personal Estate only, if they escape the first Plunder, they are generally left in Possession of what formerly belonged to them. Now I shall grant that the Managers of Corporations must be possessed of some personal Estate of their own, but it is not necessary to suppose, nor can it be supposed, that they are all possessed of Land Estates; therefore it is not to be presumed they will be as zealous in the Defence of their Country, for the sake of preserving the Lands belonging to the Corporation, as they would be, did those Lands belong properly to themselves; and a few indolent and lukewarm Managers might prevent the Corporation's giving any proper Assistance to their Country even in a Time of the utmost Distress. In the Case therefore of a foreign Invasion, it would be of the most dangerous Consequence to have a great Part of our Lands in the Possession of Corporations; and in the Case of any Attempt upon our Liberties, the Consequence would be fully as dangerous; for the History of the great Charter, upon which the Laws of Mortmain are founded, and many other remarkable Events shew that our noble and ancient Families have been the chief Supporters of our Liberties; for this obvious Reason, because they are always the first Sacrifices to Tyranny; therefore it would be most ridiculous to admit of an unlimited Alienation

of Lands in *Mortmain*, by which it might at last become impossible for us to have a noble or ancient Family in the Kingdom: Besides we know by Experience, that Corporations of all Kinds are more easily managed and influenced by a Government, than any equal Number of Individuals; and they have upon all Occasions shewed themselves less jealous of those Steps which seemed to tend towards the Establishment of arbitrary Power.

Another great Danger which is most justly to be apprehended from too great a Liberty of granting or alienating Lands in *Mortmain* is, lest any one particular Society should thereby become so powerful, as to be able to prescribe Laws to our Government, and by that Means overturn our Constitution. This is a Danger which seems to be fully acknowledged by the noble Lords who have spoke on the other Side of the Question; but say they, this Danger is no way to be apprehended, while our present Laws against Alienations in *Mortmain* continue in force; because no new Purchases can be made without a Licence from the Crown. My Lords, it is from that very Cause that I apprehend a Danger may arise, and if not prevented, may become unavoidable before it be discovered. The Crown, 'tis true, had before the Revolution assumed a Power of granting Licences; but the Crown had never an established unlimited Power of granting Licences to purchase or hold in *Mortmain* till the Act of the 7th and 8th of King *William* already mentioned in this Debate. While we have the Happiness to be under such a wise King as his present Majesty, we can have nothing to fear, because a King who looks into his own Affairs, will never allow any Society to become too powerful for himself; but we cannot hope to have always the same good Luck; and if a King should give himself up to the sole Management of any one Favourite, that Favourite may get himself established at the Head of a powerful Corporate Body or Society, and may then find it proper for his own particular Interest, to make that Society as powerful as he can, by granting as extensive a Licence, or as many Licences, as they can desire: If such an Administration should continue for any great Number of Years, the Society might become so powerful, that it would be very dangerous for any future Minister, or even for any future King, to refuse them as many more; and we know how ready all Men, but especially Ministers, are, to comply with any present Exigency, rather than run themselves into immediate Danger, by encountering a growing Evil.

In this Country, as well as in every other Country, we may look upon all the Clergymen of the Established Church, to be Members of one and the same Society or Corporate Body; for tho' they are not united by any one Royal Charter, yet there is a Sort of

A Unity established among them by the Laws of the Kingdom, and founded upon an Authority superior to that of any earthly King; from whence we may suppose that they will always unite their Force for increasing the Power of the Society; and we know by Experience how generally, and how closely they have joined against Measures which their Leaders thought might tend to the Diminution of their Power, or towards preventing its Increase. Now, my Lords, suppose we should in some future Age have a weak Prince upon the Throne, a Prince wholly guided by one Favourite, and that Favourite a Prelate who had got the Management of the Clergy almost entirely under his Direction; can we suppose that such a King, and such a Minister, would ever refuse to grant a Licence to any Ecclesiastical Corporation, either single or aggregate? And the certain Consequence would, in my Opinion, be, that if such an Administration should continue for any Number of Years, the Temporal Power of the Church, by Means of their Lands and other Possessions, would become as much superior to the State, as ever it was in any of the Ages of Popery and Superstition. In such a Case our Constitution would be entirely overturned; and tho' the present Clergymen of our Established Church have not generally the least Tincture of a persecuting Spirit; yet if their Successors should get into their Hands the whole Power of making Laws, as well

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as of putting them in Execution, it is much to be feared that a Persecution, or perhaps an Inquisition, would be set up under the Banners of the Church of *England*, as bloody and cruel as any that was ever set up under the Banners of the Church of *Rome*.

Thus, my Lords, I have shewn that, with respect to our Established Church, it may, by Means of that unlimited Power of granting Licences to purchase in *Mortmain* now vested in the Crown, become so powerful as to be able to prescribe Laws to the whole Kingdom. But when I talk of the Established Church, why should I mention the granting of them any Licence from the Crown? They have already, I may say, an unlimited Licence by Act of Parliament: So forgetful have we of late been of the Maxims of our Ancestors, that we have granted them such Licences by Law as would enable them to purchase in Time the whole Lands of the Kingdom, without so much as any one Licence from the Crown. By an Act of the 17th of K. *Charles II.* every Parson and Vicar in *England*, whose settled Maintenance does not amount to 100*l.* a Year clear, has got a Liberty to purchase Lands, to him and his Successors without any Licence in *Mortmain*, and, what is most extraordinary, without any Stint or Control. Which Act of Parliament by itself alone, with a little Management,

nagement, would enable our Church to purchase all the Lands in *England* without being obliged so much as to ask a Licence from the Crown; for we have been told in this Debate, that there are in *England* above 5500 Livings under 50*l.* a Year, and computing there are 2000 only above 50 and below 100*l.* a Year, we must from thence reckon there are in *England* 7500 Ecclesiastical sole Corporations, who have by that Act a Liberty to purchase as great a Quantity of Land as they please without any Licence in *Mortmain*.

Then, my Lords, by a still more extraordinary Act in the late Queen's Time, all the Clergymen of the Church of *England* are in some Manner united into one Corporation, and that Corporation is not only enabled to purchase Lands in *Mortmain* without any Licence from the Crown, but is provided with a very large and a perpetual yearly Fund for that Purpose; for the first Fruits and Tents, settled upon them by that Act, bring in already at least 14,000*l.* per Annum, and will in a very short Time bring in 20,000*l.* per Annum: But further, my Lords, lest that happy Event of their being made the Masters and Lawgivers of their Country, should be too long postponed, every Man in *England*, nay, every Woman in *England*, is by that Act enabled to give them by Deed, and even by Will, the whole Estate real and personal which he or she may die possessed of, and such Estates the Corporation are rendered by that Act capable to hold and enjoy without any Licence *ad quod damnum*, and notwithstanding the Statute of *Mortmain*. And I must particularly take Notice, that neither by that Act, nor by any other Act, is there a Period put to the Continuance of that Corporation: It is made a perpetual Corporation, with Leave to take Lands by Will, and purchase Lands without Stint, Limitation, or Licence, and it is provided with a large annual and perpetual Fund for that Purpose; so that by the very Nature of Things, as all the Lands they can get hold of become unalienable, our Church must necessarily at last, by Means of that Corporation, become Mistress of all the Land Estates in *England*. If we consider the many and powerful Sollicitors they have about dying Persons, and the present prevailing Madness of perpetuating one's Memory by leaving a large Estate to some Body Politick, we must conclude, that unless a Stop be put to it, this Event is not at such a Distance as some may imagine; and I must say, the Corporation has established a most excellent Rule for this Purpose: They have resolved not to purchase any Thing but Land, they have resolved not to content themselves with any Pension or Annuity issuing out of Lands, but to be absolute Masters of the Lands themselves.

What I have said, my Lords, upon this

Subject, is not with a Design to throw any Reflection upon the established Church, or to diminish the Credit of our established Clergy. No, my Lords, I hope their Credit among the People of this Kingdom will always be as considerable as it ought; but I hope, that Credit will always depend, not upon their Possessions, but upon the Purity of their Doctrines, and the Sanctity of their Lives. As I am myself an unworthy Member of the Church of *England* as by Law established, I must love and reverence that Establishment, and for this very Reason I shall always be against vesting any great Possessions in the Church. I have as great a Desire as any Man to see our Clergy all comfortably and honourably provided for; but that Provision ought not to be made to arise from Possessions of their own, but from the annual Contributions of the People; for if ever the Clergy of our established Church should come to be possessed of many and large Estates in Land, as the Popish Clergy of this Kingdom formerly were, it will be a Temptation to some ambitious and enterprising Prince, like our *Henry VIII.* to overturn our established Church, in order to get hold of their opulent Possessions. This very Thing was, I believe, one of the chief Causes of the Reformation; for tho' most of the common People had embraced the reformed Religion from Principle and a Sort of Enthusiasm, yet I am persuaded that many of our great Men embraced the first Doctrines of the Reformation, and joined with their Prince in getting them established, not from Principle, but in order to share with him in the Spoils of the then established Church; and as like Causes always produce like Effects, therefore as a sincere Member of the present established Church, and from a thorough and true REGARD to her Doctrines, I shall always be for limiting and restraining her Possessions, especially in Land, or any other Sort of Revenue but what depends upon the yearly Contributions raised by Law upon the People.

Now, my Lords, with respect to the Aggrandizement and Happiness of the Commonwealth in general: Ever since we began to understand any Thing of Trade and Commerce, it has been an established Maxim in this Kingdom, not to allow our Lands to be settled unalienably even upon private Families, and much less upon Bodies Politick; and the Reason of this Maxim is very plain; because after a Man by his Industry or Trade has faved as much as puts him above the Fears of Want, an Ambition of establishing his Family in the Kingdom, then begins to take Place; this raises in him a Desire of purchasing some Land Estate; and this Desire promotes his Industry, and makes him continue his Trade: Whereas if he could have no Hopes of getting any Land Estate to pur-

chase, which might be the Case, if the greatest Part of our Lands were settled in *Mortmain*, he would either give up his Trade, or he would go and establish himself and his Family in some foreign Country, where he could purchase a Land Estate. From hence it is evident, that the allowing of any great Part of our Lands to be settled in *Mortmain*, would be a great Discouragement to our Trade, upon which the Grandeur and Happiness of the Nation very much depends, and might rob us of a great many of our richest Merchants. To this I must add, that nothing has contributed more to the Improvement of our Lands, and the Beautifying our Country, than the great Number of Gentlemen's Seats we have in every Part of the Kingdom; whereas, if our Lands should all become the Property of Corporations, our fine Country Seats would all go to ruin, and a great Stop would be put to all further Improvement; for no Man will be at so great an Expence or Trouble in improving a Leasehold Estate, as he would be, were he the Tenant in Fee.

I have already shewed, my Lords, how much we are exposed by our Laws, as they stand at present, to the Danger of having our Lands ingrossed by Ecclesiastick Corporations, and of what fatal Consequence that might be to the Security and Preservation of our Constitution. With regard to our Lay Corporations, as they are not as yet united into one Body, it cannot be said that our Constitution or Government can be in any Danger from any Possessions they may acquire; but the Trade and Commerce of the Nation, the Improvement of our Lands, and the Beauty of the Country, will be as much injured by their Acquisitions, if they become considerable, as by Acquisitions made by the Church; and it is certain we have of late Years widely departed from the Maxims of our Ancestors with respect to Lay Corporations, as well as Ecclesiastick. The first Breach was made by an Act of the 39th of Q. Elizabeth, by which any Person was enabled, within 20 Years then next ensuing, by Deed inrolled in Chancery, to erect and found an Hospital or House of Correction: And every Hospital so to be founded, was by that Act incorporated, and impowered to purchase Lands not exceeding 200*l. per Annum* without Licence, and notwithstanding the Statutes of *Mortmain*. This extraordinary Step was at that Time something necessary, because our Poor had then no Sort of Provision made for them by Law; they had been before that Time taken care of by our Monasteries and Religious Houses, and were left entirely destitute of any publick Support by the Dissolution of those Monasteries and Religious Houses; but by an Act of the 43d of the same Queen's Reign, the present Method of obliging every

Parish, Hundred or County, to provide for their own Poor, was established; which Method, if properly regulated, and rightly pursued, would, in my Opinion, make all Publick Hospitals useless. But it seems the contrary Opinion prevailed soon after the Revolution; for in the 7th and 8th of K. William, that Act was passed, by which the Crown got an unlimited Power of granting Licences to alien and take in *Mortmain*; and the Act was intitled, *An Act for the Encouragement of charitable Gifts and Dispositions*, which was, it seems, the Pretence made use of for granting that Power to the Crown, and therefore it was, I presume, a favourite Pretence at that Time. This has made it very easy A to set up any new Corporation, and has made it easy for every old Corporation to extend their Dominions almost as far as they please; so that I think we are in Danger of having the greatest Part of our Lands swallowed up by some Corporation or other, unless a Stop be put to it in Time; and if ever this should come to be our Case, we may then bid adieu to our Trade, and to all future Improvements.

But, my Lords, the Danger of having our Lands swallowed up by Corporations, Ecclesiastick or Lay, is not the only Danger we are at present exposed to; there is a new Sort of *Mortmain* lately set up, a new Gulph opened, under the Name of charitable Uses, which may be said to be without either Bottom or Bounds, and which will certainly swallow up that Remnant which may be left by the others; for by the Laws as they stand at present, any Person in the Kingdom may, in his last Moments, devise his whole Land-Estate in Trust for charitable Uses; the Representative of the most antient Family in England, if he be Tenant in Fee-simple, may disappoint his natural Heirs, and utterly ruin his Family by such a Devise, and that at a Time when very few Men can properly be said to be in their right Senses. If we consider that all such Charities are generally left, or come to be under the Management of some one Clergyman or another, we must from thence conclude, that we have now the same Reason to prevent such Devises as our Ancestors had; for what was the Reason of the Popish Clergy's watching so insidiously the last Moments of every dying Person? Was it not in Order to get some Legacy for increasing the Riches and Power of the Church in general, they having no private Families of their own to sollicit for? And if the Riches and Power of our present Church be increased by Donations to what are called pious and charitable Uses, are we not to suppose that our Clergymen will soon begin to watch the last Moments of every dying Person as insidiously as ever the others did, if we lay a Foundation for, or leave any Hopes of Success from such Watch-

Watchfulness? The Clergy of our Church as now established by Law, are but Men, and Men are in all Ages, and in all Countries, generally speaking, indued with the same Passions, and the same Affections: It is Education and Opportunity only that makes the Difference. The Opportunity is already given, and their Education will soon begin to be turned towards making the best of that Opportunity, if not speedily prevented. Arguments for such Donations will never be wanting, when Men are pinched by the Messengers of Death: Nay, many weak Men may at such a Time be made to believe, that such a Donation will be an Atonement for a whole Life spent in Wickedness and Oppression.

Having thus laid before your Lordships the Dangers to which we are now exposed by having departed from the Maxims of our Ancestors in relation to *Mortmain*, give me Leave to examine a little the Reasons which have lately prevailed for exposing ourselves to such Dangers. The Pretence is Piety and Charity; but if it should come out that there is neither Piety nor Charity in erecting such magnificent and rich Hospitals, I hope we will then begin to think there is not the least Shadow of Reason for our leaving the Nation exposed to any Danger upon that Account. True Piety and real Charity are Virtues highly commendable, they are Virtues which I shall always esteem and encourage as much as lies in my Power. To assist the Widow and Fatherless, to nourish the tender Infant, and succour the helpless Old; in short, to relieve the Poor and Distressed, who cannot provide for themselves, is a Duty incumbent upon every Society, as well as upon every private Man: But, my Lords, this Duty is to be discharged with great Caution, and with great Circumspection; for if we mistake the Object of our Charity, if by giving what we call Charity we encourage Laziness, Idleness, and Extravagance, in the Persons to whom we give it, or in others, the Action is so far from being pious, charitable, or commendable, that it becomes impious, ridiculous, and injurious to our native Country. This, my Lords, is the Footing upon which we ought to place the present Debate; the Dispute is not about providing for our Poor, but about the Manner in which they ought to be provided for. If I thought, my Lords, that any real Object of Charity in the Kingdom would by this Bill be disappointed of that Relief which the Nation ought to give, or he had any Title to expect, I should be for rejecting it with the utmost Indignation; but the Scope of the Bill I take to be, to prevent Men from ruining their Families for the Sake of establishing such charitable Funds as I am sure never will, nor never can, be properly applied.

A I shall readily admit, my Lords, that the Poor cannot be relieved in a publick Way, without a publick Fund for that Purpose; but I am surprized to hear it said, that we have not in this Nation a publick Fund sufficient for the Relief of all the Objects of Charity that are now, or ever can be in this Kingdom, unless our Lands should be all swallowed up by Corporations and charitable Uses. Do not we know that by the Laws relating to the Poor, every Parish is obliged to support and relieve their own Poor; and if any one Parish should, by some extraordinary Misfortune, be disabled from doing so, the whole Hundred must be taxed for that Purpose; nay, if the Hundred should be unable, the whole County must be taxed? And thank God there is not as yet a County in England, but what is sufficiently capable of maintaining their own Poor; but even if such a Case should happen, we have a Method provided for supplying the Deficiency, which is by the granting of charitable Briefs; by which Method we may bring the whole Nation in Aid. It is not therefore for want of a publick Fund sufficient for all charitable Purposes that Hospitals have been set up: The setting up of them must have proceeded from some other Cause, but let the Cause be what it will, it is certain they have increased prodigiously within this last Century; so that we have now in this Nation two Methods of providing for our Poor, one by putting them into those Hospitals founded for that Purpose, and the other by obliging their respective Parishes to take Care of them; and which of these Methods is the best, will appear by considering the State and Nature of Mankind.

E It is certainly the Interest of every Society to encourage Industry and Frugality among their People, especially those of the poorer Sort; and as most Men are compelled to be industrious, and frugal by Necessities, it is not therefore prudent in any State to prevent, in any great Measure, all those Necessities. The Support of Nature is what forces every poor Man to labour, and he may perhaps supply this Necessity by working hard two or three Days in a Week, so that if he were under no other Necessity, he would probably sit idle all the rest of the Week; but then every prudent Man considers, that while he is in Vigour and Health, he ought to provide for Old-age and Sicknes; and every Man, who has any natural Affection or Compassion, will provide for his Children, and even for his Relations and Friends in Distress, in the best Manner he can: The making of a Provision for Old-age, for Sicknes, for the Education of Children, and for assisting Friends in Distress, are therefore the Necessities that compel most of our Poor to labour hard all the Days of the Week, and to save what they have earned by their Labour; but

90 PROCEEDINGS, &c. in the last Session of PARLIAMENT.

If you give a Man any Hopes of being well provided for in his Old-age or Sicknes, or of having his Children educated, and his Friends relieved, in as handsome a Manner as he can desire, without putting him to any Expence, I believe, there is not one of a hundred will either labour so hard, or live so frugally as he would otherwise have done: For this Reason great Care ought to be taken not to give Men Hopes of being supported in Old-age or Sicknes, or of having their Children educated for them, or their Friends relieved, unless they can shew, that by some Misfortune they were rendered incapable of making any Provision for those Necesfities by their own Industry and Frugality; for where-ever a Man neglects to do so, when it is in his Power, he never can be a real Object of Charity, he deserves to suffer, and the publick Good requires he should, in order to be an Example and a Terror to others.

From hence, my Lords, we must conclude, that no Person can be deemed a proper Object of Charity till after his Circumstances and former Behaviour have been strictly enquired into; and whether the Parish Officers within their respective Parishes, or the Governors and Officers of an Hospital, are most capable of doing this, is very easy to determine. The Parish Officers are generally themselves all acquainted with the Person that makes the Application, and can from their own Knowledge judge if he be a proper Object; they contribute out of their own Pockets, yearly, their Share of that Charity which is given, and are answerable to the Parish for what they do; therefore they certainly will always be extremely cautious of giving a Share of the Parish Charity to an unworthy Object, or to one who does not stand in need of it. On the other hand, the Governors of Hospitals are never all acquainted with the Person that applies, seldom any of them are; and as they pay nothing out of their own Pockets to the Charity they have the Management of, nor are answerable to any for their Conduct, they are very seldom inquisitive about the Merits, or the Circumstances of the Persons that apply; the Consequence of which is, that many unworthy Persons, and many who do not stand in need F of it, are admitted into our Hospitals; which, instead of being a Benefit, is a great Injury to the Nation, because it encourages Idleness and Extravagance among the Vulgar.

I wish with all my Heart, that all the Poor of the Kingdom, who are real Objects of Charity, were properly and decently provided for. I am sure, if they are not, it is not for want of a sufficient Fund for that Purpose; it must be by some Defect in the Laws, with respect to the Management and Application of that Fund, and whatever Amendments may be necessary in that Respect,

I shall readily agree to. But we ought to take Care, that some Sort of Ignominy or Contempt may always attend a Person's being provided for by any publick Charity; and we likewise ought to take Care, that the Provision made by Charity shall not be such as no poor Man by his utmost Industry and Frugality can provide for himself. In both these Respects, I am afraid, our publick Hospitals are blameable; for the Custom of going thither upon every Emergency is become so frequent, that no Contempt or Ignominy attends it; and the Provision made for our Poor in some of them, is much better than any common Tradesman or labouring Man can well hope to make for himself, with the utmost Industry and Frugality any poor Man can practise. The Consequence of this is, that the getting into an Hospital, or getting one's Child to be educated there, instead of being ask'd for as a Charity, comes to be solicited for as a Post or Employment; and rich Men get in to be Governors of Hospitals, not with the pious View of making an Interest in the next World by Works of Charity, but with the ambitious View of making an Interest in this, by having so many Posts or Preferments at their Disposal. This last View, I am apt to suspect, is the true Source of that Spirit which has been lately raised for erecting and endowing Hospitals; and as it is well known what Sort of Men are generally the chief Directors and Managers of such Hospitals, we may easily guess who have been the principal Authors and Promoters of such a Spirit. An Enquiry into the Management of our several Hospitals would have been of great Use in this Debate. If we had made such an Enquiry, I am persuaded we should have found many Persons upon such Foundations, who never had a Title to, and many who never had an Occasion for the Charity of the Publick; and if we had examined into the Motives for admitting such Persons, I am also persuaded, we would have found them very far from being charitable. Such Misapplications can never happen in the Disposal of Parish Charities; and as the admitting of such Persons to a Share of any publick Charity, will always be a great Encouragement to Laziness and Extravagance, I can see no Reason for exposing the Nation to any Danger, for the Sake of erecting such charitable Foundations.

We know, my Lords, how apt Men are to indulge themselves in Laziness and Extravagance from very chimerical Hopes: A Benefit Ticket in a Lottery can fall but to one, but the Expectation of it makes hundreds extravagant. In the same Manner, if People see one idle and profligate Person well provided for in an Hospital, or the Child of such a Man handsomely educated, and better taught than the Children of poor People usually are,

hundreds of them will, in Hopes of meeting with the same Relief, either live idly, or spend what they earn extravagantly, so that most of them, or at least their Children, must come upon the Parish at last. This must of course increase the Number of our Poor, and the Burthen upon every Parish, and this Consequence, my Lords, is fully confirmed from daily Experience; for there is no Nation in the World that has so great, or so many publick Foundations for relieving the Poor as we have in *England*; and yet our People pay yearly more for that Purpose than is paid for the Poor of any other Country. In *Holland*, where the Poor are so well taken care of, they have few or no publick Hospitals, but every Town takes care of its own Poor, and have proper Workhouses and little Hospitals for that Purpose, where none but real Objects are admitted; and if we had in every Parish a Workhouse and an Hospital, and no publick Hospital in the Kingdom, I am persuaded our Poor would not be so numerous, and those that are real Objects would be generally better provided for than they are at present; for the greatest Objects are generally left upon the Parish, while unworthy Persons, or Persons who stand in no need of it, are admitted into our rich and magnificent Hospitals. This is a Grievance which cannot be prevented by the utmost Diligence and Application of the Governors, who are generally of too high a Rank for having any Acquaintance among the Vulgar; they must depend upon Information, they cannot depend upon their own Knowledge, and those who depend upon Information will often be deceived.

I beg pardon, my Lords, for having taken up so much of your Time upon this Subject; but the Words Piety, Charity, and the Relief of the Poor, have been made so much use of in this Debate, that I thought it absolutely necessary to explain that Matter; and from what I have said I hope it will appear, that no Charity ought to be given without proper Enquiry; that such an Enquiry may be made by Parish Officers, but never will, nor ever can be made by the Managers of publick Hospitals; and that we have in this Kingdom a sufficient Fund for all real Objects of Charity without any publick Hospital; from whence I think it must be concluded, at least, that we ought not to leave our Lands in Danger of being swallowed up, the Constitution overthrown, and the Nation undone, for the Sake of erecting and endowing such Hospitals.

With respect, my Lords, to the Clergy of the Established Church, I am really sorry to hear there are so many of them, so poorly provided for: It gives me a most affecting Concern to think, that there are so many pious and worthy Clergymen of the Established Church struggling with Poverty and Want, at the same Time that they are rendering such

Services to their Country; and I must think it a Blemish in our Constitution, at least in that Part of it which is called the Established Church, to have so many of its Members living in the greatest Penury and Distress, while a great Number of others are wallowing in the greatest Affluence and Ease; for since they are all the Servants of the Publick, and are paid by the Publick, every Man ought to have a proper Share of the publick Rewards. Let us but compare our Conduct in this Respect to the Conduct of a private Family: Suppose any one of your Lordships, or the Master of any great Family, should give large and extravagant Wages to his Stewards, his Masters of the Horse, his Master Cook, and his other superior Servants, but at the same Time should have all his lower Servants, who did the whole Business of his Family, kept in Rags, half starved, and without Shoes or Stockings. Would not every Man blame the Economy of such a Family? Would not every Man find Fault with the Conduct of the Master? How then can we justify our own Conduct with respect to the Clergy of our Established Church? We find it is generally condemned; every Man admits our poor Clergy ought to be better provided for; and for this Purpose the Corporation for the Bounty of Q. Anne was established: The Design of that Corporation was certainly to be highly approved of; but I cannot say the Rules they have laid down for accomplishing that Design deserve so much an Approbation. They are to provide in two or three Centuries for all our poor Clergy; but how? By settling a great Part of the Lands in the Kingdom in *Mortmain*, which to me is the same as if the Master of the Family I have mentioned, should resolve to provide for his lower Servants, by selling off or mortgaging a Part of his Estate yearly; which would, I am sure, be adding Madness to Foolishness. What then must he do? Is not the Method he ought to take plain and easy? Ought he not to diminish the Salaries of some of his upper Servants, or dismiss some of them, and apply their Salaries to increasing the Wages of the inferior?

I am not, my Lords, of any levelling Principles; I am for keeping up the same Orders and Distinctions, and the same Form of Government we now have in our Established Church; but I am not of Opinion that it is necessary, or that any Man ought to have, or can deserve half a dozen rich Benefices at once; and a few Scrapings might, in my Opinion, be taken from many of our great Livings, after the Deaths of the present Incumbents, which would be sufficient for establishing a proper Maintenance for every Clergyman in *England*. Nay, even the Fund settled upon the Corporation for the Bounty of Q. Anne, if it were immediately parcelled out among

among the poorest Livings, it would, I believe, go near to make every Living in England worth 20*l.* *per Ann.* and if to this we should add all those Benefices which are of no Use to the Nation, nor any Way necessary for the Support of our present Form of Church Government, I am sure we could very easily make a handsome Provision for every Clergyman in the Kingdom, without endangering our Constitution, by throwing too great a Part of our Lands into the Hands of the Church. Let us consider what a great Revenue our Church is already possessed of. I have been informed, that in a posthumous Work of a late Rev. Prelate, who never had a Fault laid to his Charge, but that of being too high a Churchman, it is asserted, that the Revenue of our Church amounted then to two Millions and a half yearly, and that the whole Business was done by those who receive the half Million only. I am sure our Church Revenue is encreased since that Time; and if what that Rev. Prelate asserts be true, I am sure it is high Time for us to put some Stop to their making any new Acquisitions in Land; especially considering that our poor Clergy may be all handsomely provided for, without allowing any more of our Lands to be settled in *Mortmain*, or making any Addition to the Revenues of the Church in general.

This is an Opinion, my Lords, which every Layman must be of, who considers the Consequences of Things. We may easily calculate what a vast Land Revenue must be added to the Church by the Rules the Corporation for Q. Anne's Bounty have established. They have laid it down as a Rule, that all our poor Clergy must be provided for by Purchases of Land in *Mortmain*. We have been told that there are in England 5500 Livings under 50*l.* a Year, and of these 1000 under 10*l.* a Year: Suppose them then one with another worth 25*l.* *per Ann.* each; a Land Revenue of 412,500*l.* *per Ann.* must therefore be purchased, in order to make them 100*l.* a Year each. Then suppose there are 2000 Livings above 50 and under 100*l.* a Year; if we take them at a Medium, which is 75*l.* *per Ann.* each, a new Land Revenue of 50,000*l.* a Year must be purchased, in order to make them likewise 100*l.* each. But, my Lords, I must beg you'll consider, that even when this is done, the Corporation is not to be dissolved, nor are any of the Powers and Privileges they now have, to cease; they may then resolve to make all these 7500 Livings worth 200*l.* a Year each; for this Purpose new Purchases of Land must be made to the Amount of 750,000*l.* a Year; and when this is done, they may, for what we know, resolve to make every Living in England worth 1000*l.* or 2000*l.* *per Annum*, if there were Land enough in the British Dominions for answering such a Demand. For

A this Purpose they would stand in need of no new Powers, nor any Privileges but what they have already vested in them by Law; and I must say, the Rule they have laid down for augmenting first those Livings, where any Layman will join with them, is most excellently calculated for the speedy Execution of such a Scheme; because a young Man in Orders, who has 500*l.* or even 1000*l.* Fortune, or a Father who has a Son to provide for, may easily be induced to join his whole Fortune to the 200*l.* advanced by them, in order to make a Living of 40*l.* a Year worth 90 or 100*l.* a Year, upon Condition of his getting a Presentation to the Living. I do not in the least suspect that the present Governors of this Corporation have any such Scheme in their Thoughts; but Mens Schemes generally grow with their Fortunes; and as this Scheme may some Time or other be formed by ambitious Clergymen, and may in Time be carried into Execution, we ought to take Measures for preventing it before it becomes too late; for if our Church should get into their Possession 4 or 500,000*l.* a Year Land Revenue, artfully purchased, more than they now have, I am afraid it would be out of our Power to prevent their pursuing any Scheme they had a Mind; or at least, that we could not put any Stop to their Schemes without running the Risk of raising the Flames of a Civil War in the Kingdom. I therefore think the Rule they have laid down, of laying out no Money but upon the Purchase of Lands, ought to be altered, and if that Rule be altered, there is no Occasion for altering or explaining any Words in this Bill.

E Having now, my Lords, shewn the Dangers that may arise from the great Liberty lately introduced of alienating Lands in *Mortmain*, and having shewn that we are under no Necessity, nor have the least Occasion, for exposing ourselves to such Dangers, I shall next beg Leave to take notice of that unbounded Liberty of devising Estates by Will, which we have heard so strongly insisted on. I shall grant that a Man has a natural Right to dispose of his own, at what Time, and in what Manner he thinks most proper; but this Rule is not without any Limitation or Exception; it must always be under this Restriction, that no Man shall dispose of his own to the Hurt and Prejudice of the Society to which he belongs; and it is reasonable it should be so, because the Acquisition, or at least the Preservation of that Property depended and must always depend upon the Protection he received from the Society. The Legislators of every Society, are the only Judges of what may or may not tend to the Hurt and Prejudice of the Society: According to their Judgment in this Respect, they have a Power to make Laws for regulating and restraining that

that natural Right which every Man has to dispose of his own; and if those Laws be reasonable and necessary for the Preservation of the Society, every good Subject will observe them, and no bad Subject ought to be allowed to find fault with, or transgres- them. I think I have made it evident that a Liberty of devising Land Estates in Mortmain to any Corporation, or upon any Pretence whatsoever, may be hurtful to the Society; and particularly that those Pretences drawn from Piety, Charity, and a Compassion for the Poor, are so far from being real, that they are made use of only as a Cloak for the Vanity, the Pride, and the Ambition of private Men, who have got into, or expect to get into the Management of what they call charitable Foundations.

With regard to private Life, my Lords, can we suppose that a Man will be less industrious or frugal because he cannot dispose of his Estate by Will to the Church, or to a magnificent Hospital? We may as well suppose that he will be less industrious or frugal, because he cannot dispose of his Estate to the *Grand Seignior*, or the *Sopby of Persia*. If a Man happens to fall into that delirious Ambition of erecting a Palace for Beggars, and having his Name engraved in gilded Letters above a superb Portico, or if he grows ambitious of having his Statue set up in the Area of any charitable Palace already erected, cannot he give some Part of his Estate in his Life-time for that Purpose, and reserve a sufficient Estate for supporting himself? For we generally find that the Men who are seized with such Deliriums, are Men of great Fortunes and small Expence; so that the reserving a Competency for their own future Support, cannot occasion any great Diminution in the Donation they make, nor can it disappoint the great End of their Ambition. As to the Regard and Attendance which a dying Man may expect, and ought to meet with from his Relations, Friends and Servants, I think nothing can be better contrived than the Bill now before us, for preventing a Man's being disappointed in so just an Expectation, because it lays every landed Gentleman under a Necessity of reserving something to be disposed of by him at his Death, and likewise lays him under a Necessity of disposing of that Something among his Relations, Friends or Servants, or of leaving it to his next Heirs. For this very Reason I think the Words at the End of the first Clause proposed to be left out, are absolutely necessary: and therefore I hope they will be left standing a Part of this Bill.

Whether a Man's next Heirs have any natural Right to succeed to his Estate after his Death, is not the Question now before us: I hope it will be granted they have at least as much natural Right than any other Person

natural or political; and I am sure the giving or leaving it to them, or to any other Persons natural, is more charitable than the giving it to any charitable Use or Corporation whatsoever; because when the Estate comes to private Persons, they will be enabled to contribute the more to the Parish Charities in the respective Parishes they belong to, which are the only Charities that are, or ever can be properly or justly applied; whereas when the Estate is given to any other charitable Use, or to any Corporation, or even to the Church, the Donor may expect and depend upon it, that the Donation will be misapplied; and every such Donor may see, that the giving of any such Donation may be of dangerous Consequence to his Religion as well as his Country. Therefore, as a sincere Christian, as a true Lover of the Church of *England*, without being an Admirer of Ecclesiastical Power, and as a good Subject, I must be for laying at least that Restraint upon such Donations which is proposed by the Bill now before us: And one of my chief Reasons for being so, is, my Lords, lest the Clergy of our established Church should be tempted and instructed to watch the last Moments of dying Persons, as infidiously as ever the Monks and Friars did in the darkest Times of Popery and Superstition: The Opportunity is established by the Laws as they stand at present; they may by so doing increase the Wealth and Power of the Church, nay, they may increase the Revenue of their own particular Cure; and if ever we should have an ambitious Clergyman for a Prime Minister, it would be the only Way to acquire an Inteſeſt at Court, or Preferment in the Church. These were all the Motives the Popish Clergy had for being so infidious, they never proposed by such Infiduousness to enrich their own private Families; and if this stumbling Block should be left any longer in the Way of our present Church, we may depend on it that new Doctrines will be set up, and all the ensnaring Tenets of the Church of *Rome* revived by degrees, and strongly recommended by all Pastoral Instructions.

I shall conclude, my Lords, with observing that our two Universities, and the Colleges now excepted out of this Bill, are, in my Opinion, the only publick Foundations which are either useful or necessary in this Kingdom, and the Exception as to them furnishes me with a particular Argument in favour of this Bill; because I think it will contribute greatly to increasing the Revenues of every one of those Foundations; for as every other Channel for Death-bed Devises will from henceforth be shut up, I must think it will cause the more to flow into that Channel: The Pride and Ambition of Men, which I suppose, and, since our Poor are all sufficiently provided for otherwise, I think I may,

without any Breach of Charity, suppose to be the chief Motive for all Donations to Hospitals or Incorporate Bodies, will still remain the same; and those who cannot upon their Death-beds propose to eternize their Memories by procuring their Statues to be set up in the Area of an Hospital, will endeavour to get it set up in the Area of a College, and for that Purpose will leave them an Estate. This is turning the Passions of private Men to that which is most useful and necessary for the Society, which is one of the chief Ends of all political Regulations. Therefore, my Lords, as a Friend to our Universities and other Seminaries of Learning, and from the great Desire I have to encourage Learning, and to see all learned Men sufficiently provided for, I must declare my Approbation of the Bill now under our Consideration.

*Petition against Smuggling, and DEBATE
in the H. of C——ns on the Smuggling Bill.*

On March 10. A Petition of the Drug-gists, Grocers, Chinamen, and others, Dealers in Tea, was presented to the H——le of C——ns, and read; setting forth, That the Petitioners were induced to hope, that the Interest of the fair Trader in Tea would have been effectually secured by an Act passed in the 10th Year of his late Majesty, by which an inland Duty of 4*s.* per Pound was laid on all Tea, without Distinction of Quality; but notwithstanding the Regulations made by that Act, and the many Penalties the Smugglers of Tea and their Accomplices were liable to by Law, the Petitioners had fatally experienced, the clandestine Importation of that Commodity was so far from being prevented, that it was carried on to such a Degree, that the Petitioners had the strongest Reason to believe, near one half of the Tea consumed in this Kingdom paid no Duty; and that the very high Duty of 4*s.* per Pound, as well as the Inequality of its being laid, were the principal Foundations of the pernicious Practice of Smuggling, the coarser Sorts bearing much too great a Proportion of the said Duty, and by the Smugglers bought Abroad at one third of the Price it would stand the fair Trader in at Home; and that unless some Remedy shou'd be applied effectually to prevent that known Evil, the Petitioners and all fair Traders would be under extreme Difficulties in carrying on their Trade, by reason of the Disadvantages they were under, from the Practices of Smuggling, as well as from the Hardships they endured, and the Trouble they were put to, by the Execution of the said Act; and that the Petitioners conceived the most effectual Means of putting a Stop to the clandestine Importation of Tea would be, to alter the Duty of 4*s.* per Pound to a certain Rate ad Valorem according to the Prices Tea

A should sell for at the East India Company's Sale; by which Alteration, the Petitioners apprehended, the Amount of the Duty to the Publick would be equivalent, considering, the Quantity, before that Time fraudulently imported, would be then added to the Revenue; and therefore, for the Preservation of that Trade to the Petitioners, by putting an End to the Practice of Smuggling, and for securing a Revenue to the Publick, by the Importation of that Commodity in British Ships from China and other Parts of India, and for preventing any Money being sent to neighbouring Countries for the Purchase of Tea to be clandestinely imported and consumed in this Kingdom, praying the House to take the Premises into Consideration, and give the Petitioners such Relief, as to the House should seem meet.

B Upon the presenting of this Petition, it was resolved *Nem. Con.* That that House would, upon that Day seven-Night, resolve itself into a Committee of the whole House, to consider of the most effectual Means to put a Stop to the great and growing Evil arising from the unwarrantable and illegal Methods of importing Tea, and other Goods into this Kingdom; and the said Petition was ordered to be referred to the Consideration of the said Committee.

C Accordingly, on April 16. the House resolved itself into the said Committee, and the Report being immediately made to the House, Leave was given to bring in a Bill for the Purposes resolved on by the Committee, and Sir Charles Turner, Mr. Chancellor of the Exchequer, Mr. Doddington, Sir George Oxenden, the Lord Sundon, Mr. Attorney General, Mr. Solicitor General, Mr. Scrope, and Mr. Edward Walpole, were ordered to prepare and bring in the same. And on May 3. Sir Charles Turner presented the same to the House, being intituled, A Bill for indemnifying Persons, who have been guilty of unlawful importing Goods and Merchandise into this Kingdom, upon the Terms therein mentioned, and for enforcing the Laws against such Importation for the future; and the same was then read the first Time, and ordered to be read a second Time. The next Day this Bill was E read a second Time, and committed to a Committee of the whole House; and on the 7th, 10th, and 11th it passed thro' the Committee, where many Amendments were made to it, which were reported on the 12th, and most of them, with Amendments to some, were agreed to by the House; but some of the Amendments made to the Committee were disagreed to; and after the House had likewise made some Amendments to this Bill, it was, with the Amendments ordered to be ingrossed. On the 14th the said Bill was read a third Time, after which it was resolved upon a Division of 88 to 39, that the Bill

should

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should pass; and Mr. Attorney General was ordered to carry the Bill to the Lords, and desire their Concurrence.

Altho' this Bill did not meet with that Struggle and Opposition in the H—se of C——ns, which was at first expected; yet several Exceptions were taken both to the general Scope of the Bill, and to some of the particular Clauses. With respect to the Bill in general, it was said, That it was very extraordinary to see such a Petition followed by such a Bill: The Petition was a Petition from many Merchants and Shop-keepers, complaining of too high a Duty upon a certain Sort of Merchandise, and of the Hardships they were subjected to by the Laws lately made for collecting that Duty: Upon the Foundation of that Petition, a Bill had been brought in, which no way diminished the Duty, and instead of relieving the Merchants from any of the Hardships they were before exposed to, it laid them under many new Hardships, never before heard of in this Country, and such as they thought inconsistent with the Liberties of the People: This they said was a Method of proceeding by which, they were afraid, the Subject would be terrified from ever making an Application to Parliament, for being relieved against those Grievances they thought they had Reason to complain of; for no Man would ever apply to Parliament for Relief, if he could have the least Suspicion that his Case might be rendered more intolerable by any such Application.

To this it was answered, That the frequent and general Practice of Smuggling was the Grievance which the Petitioners chiefly complained of, and was a Grievance which all fair Traders had great Reason to complain of; therefore an effectual Method for preventing Smuggling would be a Relief from the Grievance chiefly complained of, and this being the Scope and Design of that Bill, it was a proper Consequence of such a Petition: That the Duties complained of were engaged for the Payment of old Debts, or for the Support of the Government, and could not therefore be lowered, without replacing them by establishing some new Fund, which could not then be done; and that none of the Pains and Penalties to be inflicted by that Bill, could be any Hardship upon fair Traders, but only upon Smugglers; and the more Hardships, Difficulties, and Dangers, they were exposed to, the better it would be for the fair Trader.

With respect to the particular Clauses, we shall take notice only of the Objections made to that Clause by which it is enacted, That any Ship, not exceeding the Burthen of 100 Tons, shall be forfeited and lost, if she should take in from another Vessel at Sea, within 4 Leagues of the British Coasts, any foreign Goods, Wares, or Merchandizes, without

Payment of the Customs, unless in case of apparent Necessity; and to that Clause by which it is enacted, that all Goods found concealed in any Ship or Vessel at any Time after the Master thereof shall have made his Report at the Custom-house, and which shall not be comprised or mentioned in the said Report, shall be forfeited and lost.

A With Regard to the first Clause, it was said, That it would be a most terrible Hardship upon the Owners of any Ship, to make them forfeit their Ship, only because of the Captain's, or perhaps some of the Sailors, taking a Pound of Tea, or an Anchor of Brandy, Rum, or Arrack, from on board another Ship they accidentally met with at Sea: That in Penal Laws great Care ought always to be taken, not to subject any Man to a Penalty or Forfeiture, except such as were really guilty; but by that Clause the Owners of a Ship were to be subjected to a great Forfeiture, tho' they neither were, nor could be any way guilty of, or so much as privy to, the Crime for which that Forfeiture was inflicted; and the Hardship upon them was the greater, because it would be impossible for them to guard against it; for every one knew, that, for the most part, the Command of Merchant Ships was given to Gentlemen who had no Fortunes in the World, and therefore could not make good to the Owners the Damage they might sustain by the Forfeiture of their Ship: The Owners of Ships never looked for any Thing more in a Master, but the Character of an honest careful Man, and an expert Sailor; but in this Case, neither of these Qualities could be a Safe-guard to the Owners, because their Ship might be forfeited and lost by the Knavery, perhaps by the Treachery of any common Sailor on board, without any Fault in the Master.

B To this it was added, That the Estates vested in Shipping were already liable to so many Penalties and Forfeitures by our Custom-house Laws, and were subject to so many Dangers from other Accidents, and the employing of any Estate in that Way was in itself of so little Advantage to the Owner, that many Gentlemen had already withdrawn their Fortunes from that Branch of Trade; and if that Clause should pass into a Law, no Man who had a Regard to his Family would employ or continue any Part of his Estate in that Branch; which would certainly be a great Disadvantage to our Shipping, and a great Discouragement to our Seamen.

C As to the other Clause, it was said, That a Merchant might thereby forfeit a valuable Parcel of Goods by the mere Negligence or Forgetfulness of the Master of a Ship, whom he had never known or entrusted; and that without its being possible for him, by the utmost Care and Diligence, to prevent such a Forfeiture; because the Goods might be

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forfeited before it was possible for him to hear of the Arrival of the Ship, or to know that he had such a Parcel of Goods on board such a Ship; for the Master always made his Report immediately upon his Arrival, and before he had Time or Opportunity to rummage his Ship, or to send to any of the Merchants to come and take care of their Goods; and as Masters are generally in a great Hurry at their setting out, when small Parcels of fine Goods are usually sent on board, a Master might very probably forget to mention some of them in his Report, which by this Clause would occasion a Forfeiture, such Goods being always lodged in Places that would be call'd conceal'd; whereas, as the Law then stood, if the Master upon rummaging and searching his Ship, which every Master did before Clearing, or if the Merchant upon hearing of the Ship's Arrival, or receiving Advice of his having such a Parcel of Goods on board, should come to look after his Goods, tho' they had been forgot in the Report, a Post-entry might be made, by which all Forfeitures and Penalties would be prevented. This they thought would be a new Hardship upon Merchants, and a new Discouragement to Trade, which was before, by our late Statutes relating to the Customs, subjected to so great an Expence, and so many Difficulties, that it was impossible for our Merchants to carry on their Trade at so easy a Rate as our Neighbours did, which was the true Cause of our being under-sold by Foreigners in all the Markets of Europe.

To these Objections it was answered, That all these Hardships and Dangers might easily be prevented by the Care and Conduct of Masters of Ships: That Owners or Merchants who intrusted their Ships or Goods to idle, careless Men, were certainly in some Fault, and therefore deserved to suffer if there were no Necessity for making them do so: But that in the Cases then before them, it was absolutey necessary to lay some Part of the Penalty upon them, for the very Reason that had been given against it; because the Masters employed by them were often Men of such low Rank, and so poor, that it was impossible to recover any Penalties from them; and as Duties upon Importation were absolutely necessary for the Support of our Government, and it being impossible to collect those Duties without laying Penalties upon Smuggling, those Penalties must be laid on in such a Way as to make it possible to recover them, otherwise they would certainly prove altogether ineffectual. That with respect to the Forfeiture of Ships, as the Clause was amended, and confined to Ships not exceeding 100 Tons, it could not much regard any Branch of our foreign Trade, it would chiefly regard our Coasting-

Vessels, and our Holland's and French trading Sloops, many of which, they were afraid, were chiefly employed in Smuggling. That they would be sorry if any Person suffered thro' a sneer Oversight; but if they gave by Law too great, or, indeed, any Indulgence to Oversight, fraudulent Designs would always be cloaked under pretended Oversight, and therefore it was necessary to make the Law severe, tho' in the Execution of that Law, some Indulgence might be shewn in any Case which appeared clearly to those who had the Execution of the Law, to be nothing but an Oversight. That we had, 'twas true, many Customs and Duties upon Goods imported, and the Laws for collecting them might probably subject our Merchants to some Inconveniences, and to some Expence; but they knew of no Country in the World where their Trade was free from Customs and Duties, and they believed the Merchants of this Kingdom were subjected to no greater Inconvenience or Expence on that Account, than the Merchants were in any of our neighbouring Countries; so that if Foreigners under-sold us in any Market, some other Reason was to be assigned for their so doing, and when that Reason was assigned, if it was possible to remove it, they would join in any Measure that could be proposed for that Purpose.

Amendments offer'd in the H. of Lds, and DEBATE thereon.

This Bill was read a first and second Time in the H—se of L—ds without any considerable Debate, but when it came before the Committee of that House, which was on May 17, the following Amendments were offered by the L—d H—ck, viz.

In the A& as 'tis now printed, Page 517. Line 29, leave out from the Word (frequently) to the Word (in), in the 38th Line, and insert (lurk, wait or loiter in divers Parts of the Kingdom).

P. 518. L. 10, before (Persons) insert (Person or) and after (Persons) leave out to the first (and) in the 9th Line of the 519th Page, and instead thereof insert (is, are, or shall be lurking, waiting, or loitering, with Intent to be aiding and assisting in the running, landing, or carrying away any prohibited or uncustomed Goods, it shall and may be lawful, to, and for every such Justice of Justices, to cause all such Persons to come and be brought before him or them, and to grant his or their Warrant or Warrants for the apprehending such Offenders, and bringing him or them before any of his Majesty's said Justices of the Peace; and if such Persons shall not give a satisfactory Account of themselves and their Callings, and Employments, and thereby, or otherwise, make it appear

appear to the Satisfaction of such Justice or Justices, that they were not so lurking, waiting, or loitering, with Intent to be aiding or assisting in carrying on any such fraudulent or unlawful Practices aforesaid, then every Person who shall not give such Account and Satisfaction to such Justice or Justices, shall be committed to the House of Correction, there to be whipped and kept to hard Labour, for any Time which such Justice or Justices shall in his, or their Discretion, think meet, not exceeding one Month; and that the Commissioners of the Customs or Excise respectively shall cause to be paid to the Person or Persons informing of such Offender or Offenders, a Reward of 20*s.* for every such Offender so taken as aforesaid.

Provided always, and be it further enacted by the Authority aforesaid, that if any such Person so brought before such Justice or Justices, shall desire Time for the making it appear that he or they were not lurking, waiting, or loitering, with Intent to be aiding or assisting in the carrying on such fraudulent or unlawful Practices, such Person or Persons shall not be punished by Whipping or other Correction; but then, and in every such Case, it shall and may be lawful, to, and for every such Justice or Justices, to commit such Person or Persons to the common Jail, there to remain and continue until he or they shall give such Account of themselves, or make Proof of the Matters aforesaid, to the Satisfaction of such Justice or Justices, or until such Person or Persons shall give and find good and sufficient Security, to the Approbation and Satisfaction of such Justice or Justices, not to be guilty of any of the said Offences, or fraudulent or unlawful Practices.

P. 519. L. 9, leave out (Discovery and), L. 13, leave out from (thirty six) to (if) in the 25th Line. L. 31, leave out (upon such Conviction as aforesaid). L. 40 and 41, leave out (Justice or Justices of Assize for the County where the Fact was done, or the).

P. 520. L. 3, leave out from (A&) to (all) in the 16th Line.

P. 521. L. 21, leave out from (by) to (and) in the 24th Line, and insert (an Act made in the fourth Year of the Reign P of his late Majesty King George I. (of glorious Memory) intituled, *An Act for the further preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons, and unlawful Exporters of Wool, and for declaring the Law upon some Points relating to Pyrates:* And by another Act made in the 6th Year of the Reign of his said late Majesty, intituled, *An Act for the better preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons.*)

P. 523. L. 20, leave out from (notwith-

standing) to (And) in the 26th Line of the 524th Page.

Fo. 527 A. L. 11, after (Kingdom) insert (in the Execution of his Office).

Fo. 527 B. L. 43, leave out from (Process) to the second (Or) in the 46th Line.

Upon these Amendments there was a long Debate, however they were all at last agreed to in the Committee without any one Division, as was likewise the following other Amendment offered by the E—l of S—d, viz.

P. 30. L. 13, leave out from (notwithstanding) to (And) in the 26th Line.

B Next Day the E—l of W——ck, who was Chairman of the Committee, reported the Amendments to the House, and after the first Amendment above-mentioned was read a second Time, a Motion was made for agreeing to it; but the Motion being objected to, a new Debate arose upon the same Subject; after which the Question was put, and the Amendment was disagreed to, upon a Division, 64 not Contents, to 58 Contents; and the other Amendments made by the Committee, being afterwards read a second Time, were, every one of them, of course disagreed to.

In both these Debates the Arguments for the Amendments, offered by the L——d H——cke, were in Substance as follows, viz.

C My Lords, while we continue in the present Method of raising those Funds which are necessary for the Support of our Government, I am very sensible how much it concerns us to prevent that fraudulent and pernicious Practice called Smuggling, and therefore I shall always be ready to join in such Measures as I think proper and necessary for that Purpose; but at the same Time, my Lords, do not let us forget the Freedom of our Constitution, and the Liberties and Privileges of the People; for Slavery would be a Price too dear even for the most absolute Security against Smuggling: For this Reason, when any Method is proposed, or any Bill brought in, for preventing the Running of Goods, or the detecting, apprehending, and punishing Persons guilty of such Practices, we ought to consider, not only, whether it will be effectual for the End proposed, but whether it be consistent with our Constitution, and the Liberties of the People.

G By all those who understand any Thing of our Constitution, it must be granted, that one of the great Barriers for the Liberties of the People, is, that fundamental Maxim of the Laws of this Kingdom, by which every Man is presumed innocent till the contrary appears by some Overt Act of his own; and that Act must be such a one as is in itself unlawful, and of such a Nature that no innocent Construction can be put upon it. We have

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have in our Laws no such Thing as a Crime by Implication; nor do we pretend to judge of, or to punish a Man for mere Thinking. From hence it is that a wicked or malicious Intention can never with us be proved by Witnesses: Facts only are admitted to be proved, and the Judge and Jury are from those Facts to determine, with what Intention they were committed; but no Judge or Jury can ever by our Laws suppose, much less determine, that an Action in itself innocent and indifferent, was attended with a criminal and malicious Intention. Such an Inference, my Lords, was never made in a free Country, nor under any Government but that of a tyrannical as well as arbitrary Administration.

Another Security for our Liberties is, that no Subject can be imprisoned unless some felonious and high Crime be sworn against him. If the Crime be not in itself atrocious, or if there be only a Suspicion sworn against him, the greatest Hardship he can be subjected to, is, to be imprisoned till he gives Bail for his Appearance; and if any of our inferior Judges refuse to admit him to Bail, or refuse to accept of proper and sufficient Bail, the Subject so aggrieved may immediately apply by *Habeas Corpus* to the King's Courts in *Westminster-hall*, the Judges of which are now by the happy Revolution put above being influenced by any Authority but that of Justice and the established Laws of their Country, or awed by any Thing but that of their own Character and Reputation, or an Impeachment in Parliament, which would certainly be the Consequence, if they refused Justice to any the least of his Majesty's Subjects. This, my Lords, with respect to private Men, is the very Foundation-stone of all our Liberties, and if we remove it, if we but knock off a Corner, we may very probably overturn the whole Fabrick.

A third Guard for our Liberties, and the only other I shall at present take Notice of, is, that Liberty which every Subject has, not only to provide himself with Arms proper for his Defence, but to accustom himself to the Use of those Arms, and to travel with them whenever he has a Mind. This, my Lords, is not only a Defence for our Liberties, but it is the chief and only Defence upon which we ought to depend, for the Preservation of our Country against foreign Invasions. In arbitrary Governments, we know it is the Custom, and the Maxim, to disarm the People, and to prevent any Man's furnishing himself with Arms, or accustoming himself to the Use of them, but such as are retained and employed by the Government; therefore such Governments are always obliged to keep a large Body of mercenary Troops in their Pay, who may perhaps sometimes be able to defend the Country against Invasions, but they are generally able, and always ready and

willing to defend their Pay-masters against the justest Resentment of the People; so that in such Countries it may be justly said, the People are preserved from being plundered by foreign Enemies, for no other Reason but that their domestic Plunderers may find a more rich and plentiful Booty; and in all such Countries, we find their Laws are generally partial in favour of Tax-gatherers and other Instruments of Power, and terribly severe upon those who shall upon any Occasion dare to oppose them, in what they may be pleased to call, the Execution of their Office.

B Having premised these Observations upon our Constitution, and upon the Nature of a free Government, give me Leave, my Lords, to apply them to that Clause in this Bill, which subjects every Man in the Kingdom to the Danger, nay, I may say Certainty, of being committed to Prison by a single Justice of Peace without Bail or Main-prize, of being convicted and transported as a Smuggler, and if he returns before the Time limited, hanged as a Felon without Benefit of Clergy;

C and all this without his having been guilty of any one Overt Act, except that of travelling properly armed for his Defence, and having the Misfortune to meet with two of his Friends upon the Road, armed in the same Manner; in case any two Rogues of Informers, or perhaps real Smugglers, who are to get 150, perhaps 250*l.* by their Perjury, shall swear that this honest Man and his two

D Friends were assembled and armed, in order to be aiding and assisting in the clandestine running, landing, rescuing, or carrying away prohibited or uncustomed Goods. This Regulation, when stript of that Multiplicity of Words which render obscure the Meaning and Intent of every Clause of an Act of Parliament, really seems to me to be the most terrible and the most entrapping Regulation

E that was ever proposed in any Country, and if it passes into a Law, I am sure it will not be quite safe for any 3 Gentlemen in the Kingdom to be seen in Company together, if they have but walking Swords by their Sides.

F It is evident at first View, that this Regulation is repugnant to all the Maxims of a free Government. The wearing of Arms

is an Act, not only innocent, but highly commendable, therefore no Presumption of any Crime can from thence be inferred; and for this Reason the admitting of Witnesses to prove that any 3 Men were so armed, in order to assist in Smuggling, is admitting Witnesses to prove an Intention, without any one Overt Act from whence that Intention can possibly be inferred, which is inconsistent with

G the Freedom of our Constitution, and with the whole Tenor of the Laws of this Kingdom. We may as well admit Witnesses to prove that a Man got up in the Morning, and put on his Cloaths, in order to go and af-

set in the Running of Goods; which I am sure would be ridiculous as well as pernicious, either in this or in any other Country. But this is not all the Hardships in the present Case: Witnesses are not only to be admitted to prove a wicked Intention without an Overt Act; but they are to be greatly rewarded for giving such a Testimony; which is a most dangerous Practice, and a Practice we have lately got too much into; for, in my Opinion, no Man ought to be admitted as a Witness against any Criminal, if he be to have a Share of the Reward upon his Conviction: However, in no Case is it so dangerous as it will be in this; because when false Witnesses come to swear a Fact upon a Man which he was innocent of, he may prove himself to have been at another Place at the Time; or he may fall upon many other Ways to make his Innocence appear, and to convict the Witnesses of Perjury, which Danger every false Witness must be in, and this is in all other Cases a great Guard to the Innocent; but in the present Case, I should be glad to know how it will be possible for a Man to prove he had no such Intention as is sworn against him, or to convict a false Witness of Perjury? His having Occasion to travel from one Place to another, and his being upon the Road thither, will be no Proof of his Innocence, or the Witness's Perjury, because every Smuggler may have, or contrive such Occasions; and as Smugglers will in this Case generally be the Informers, they may chuse a Time when concurring Circumstances fortify their Testimony: They may chuse a Time when a Ship is actually hovering at Sea; or they may lodge a Parcel of run Goods near the Place, where those against whom they have a Mind to swear, are assembled, and after procuring those Goods to be seized, they may then go and swear that such Men were assembled at such a Place, and armed, in order to assist them in the carrying off or rescuing those run Goods.

With respect, my Lords, to the Security of the Subject against unjust Imprisonments, and the demanding of extravagant Bail; and also with respect to the Liberty of applying to the King's Courts, these valuable Privileges are all to be taken away by this new Regulation: A Man is to be imprisoned without so much as a Pretence or Suspicion of his having been guilty of any Crime; only because a sorry Fellow perhaps has gone and swore before a Country Justice out of Malice, or for a Reward, that he intended to assist in the Running of Goods; and tho' this Crime, even when actually committed, be in its own Nature bailable, and tho' by our Constitution, every Man has a Right to insist that in such Cases no extravagant Bail shall be exacted from him, yet now he is to be committed without Bail or Main-Prize, there to-

remain till he can force the Justice and his Informer to bring him to a Trial, which I do not see how he can do; for by this Clause, the *Habeas Corpus* Act seems in all such Cases to be repealed. Again, if the Justice should commit Iniquity, either in not admitting of a proper and full Vindication, or in delaying to bring the Person accused to a Trial, where shall such Persons apply for Relief? For by this Clause, the Liberty of applying to the King's Courts is in such Cases taken entirely away from all the King's Subjects: The King's Courts may perhaps at last compel the Prosecutor to bring him to a Trial; but they cannot admit of the most ample and clear Vindication, nor can they in the mean Time admit the Person accused to Bail, let him be of what Character and Circumstances he will: Yet this Power, which by this Clause is taken from the King's Courts, is given to the Justices of the Peace, who are removable at the Pleasure of a Minister, and may most of them be made the drudging Tools of an Administration; therefore I must think it very extraordinary and inconsistent with the Principles of the *Revolution*, to give such Powers to such Judges, or to give them any supreme and uncontrollable Power whatsoever; especially in Cases where the Liberty of a Subject is in immediate Danger, and even his Life brought into a consequential Danger.

From what I have said, my Lords, it appears, that if this Clause passes into a Law, the Liberty and the Life of every Subject in Britain will be exposed to very great Perils, if he ever travels with Arms for his Defence, or appears abroad with any offensive Weapon in his Custody; therefore we must suppose that in such Circumstances no Man will ever travel with Arms, and since no Man can make use of any Arms, it is not to be supposed that any Man will be at the Expence of providing himself with such Utensils; for which Reason I must look upon this Bill, as a Bill for disarming the whole Kingdom; and surely none of your Lordships will think, that the passing of any such Bill is consistent with the Preservation of our happy Constitution, or the Safety of our native Country. I hope no Man thinks that Smuggling, or the Resisting of Custom-house Officers, is so heinous or dangerous a Crime as High Treason. Now I would ask what any of your Lordships would think of a new Law against Treason conceived in the very Terms of this Clause? Suppose the Preamble should recite, that traitorous and rebellious Persons frequently appear in great Gangs, carrying Fire-arms, and other Offensive Weapons, in order to be aiding and assisting in some treasonable Practices, to the great Danger of his Majesty's Person and Government, and should therefore enact, that upon Information to be given up-

an Oath before any one Justice of Peace, that any Persons, to the Number of 3, or more, were so assembled and armed, in order to assist in such Practices, the Justice might commit them, without Bail or Main Prize; and that upon due Proof of their being so assembled and armed, in order to assist in such Practices, and upon Conviction, they should suffer as Traitors; and further, that the Informers should for every Traitor so convicted receive a Reward of 50/. I am very certain, that if ever I should see such a Law passed, I should look upon our Constitution to be at an End; yet we may have an Administration that would be fond of having such a Law passed, perhaps in order to guard against those treasonable Practices, which their own Conduct had made frequent; and in such a Case would not this very Law be a good Precedent for them? Would not they have Reason to say to the Parliament, What! will you refuse to grant that Security against treasonable Practices, which your Ancestors have granted against the Practices of Smuggling?

Having thus, my Lords, shewn the Dangers that are most justly to be apprehended from the Clause as it stands at present, I shall next enquire a little into the Nature of the Evil intended to be remedied, in order to see, whether a less dangerous Regulation would not be sufficient to remedy that Evil. My Lords, the Evil complained of is, that great Numbers of Smugglers lurk about our Coasts and navigable Rivers, and conceal themselves separately, under various Pretences, in order to wait the Arrival of their Smuggling Vessels; and when these Vessels arrive, they then gather themselves in such a Body, as to be too strong for the Civil Power; so that before a proper Assistance can be procured, they get their Goods landed and carried clear off. Now there is another Clause in this Bill, which with a very little Variation will, in my Opinion, be an effectual Remedy for this Evil, which is that Clause, by which a Power is given to any Justice, upon a proper Information, to seize all such Persons, and commit them to the House of Correction, in case they cannot give a good Account of themselves, which will render it impossible for these Fellows to conceal themselves separately, and wait for a Ship's Arrival; they must from the Beginning of their Waiting appear in a Body, in which Case it may perhaps be out of the Power of a neighbouring Justice to seize any of them, in order to send them to the House of Correction; but in such a Case, it will likewise be out of the Power of any Justice to seize any of them, in order to send them to Jail without Bail or Main-Prize: In both Cases, the Justice must wait till he can procure a proper Assistance, which

A he may do generally before the Arrival of the Smuggling Vessel expected; and the sending them to the House of Correction, will as effectually prevent their being assisting, for that Time at least, in the Landing or Carrying off any Goods, as the sending them to Jail and afterwards transporting them, would do. This Regulation would be consonant to the Laws of this Kingdom, and the Punishment would be in some Measure proportioned to the Crime; because a Man who loiters idly in any Place, and cannot give a good Account of himself, deserves to be sent to the House of Correction as a Vagabond; but I must think it too severe, to make a Man guilty of Felony, or to commit him without Bail or Main-Prize, only because he is seen with a Sword or Cutlass lurking or loitering in any Place, and is not able to give such an Account of himself as may be satisfactory to a Country Justice. For this Reason, I hope your Lordships will agree to the Amendments I shall propose as follow, (as above mentioned)

B These Amendments will, in my Opinion, make the Bill as effectual as it is at present against Smuggling, and will in some Measure prevent those Dangers which may accrue from it, with respect to the Freedom of our Constitution and the Liberty of the Subject. I say, my Lords, in some Measure; for neither these Amendments, nor any Amendments, can prevent its being a very dangerous Bill, and such a one as I am sorry to see necessary in this once happy Kingdom. The Clause I have taken Notice of is a Clause absolutely repugnant to the whole Tenor of our Laws, and inconsistent with the Liberty and Happiness of the People; but there are several other Clauses which may be of dangerous Consequence both to our Trade and our Constitution, some of which I shall beg leave to take Notice of, not with a Design to amend them, or leave them out, but in order to shew that there is the greater Necessity for agreeing to the Amendments I have proposed, as well as to one other Amendment I shall hereafter propose.

C The Clause for making all Persons guilty of Felony, who to the Number of two or more, shall be found armed with any offensive Weapon, and travelling within five Miles from our Sea-coasts or any navigable River, with any Horse or Cart whereon shall be laden or put more than six Pounds of run Tea, or any other run Goods above the Value of 30/. Sterling, is a most dangerous Clause for the Subject; because it puts it in the Power of any malicious or knavish Servant to make his Master, if he travels with a Sword or Pistols, guilty of Felony, whenever he has a Mind, by putting 7 Pounds of Tea, or 30 Guineas-worth of Lace into his Master's Portmanteau, and going at the next Town they stop at, to inform against him as a Smug-

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Smuggler; for which Piece of Malice or Knavery, this Servant is, by a subsequent Clause to receive 50*l.* Reward. Nay, I do not know but some Lord of this House may sometime hereafter be transported as a Smuggler; for 7 Pounds of Tea, or 30 Guineas-worth of Lace, may be packed up in very little Room, and if a malicious or knavish Servant, should put any such Parcel into his Lord's Coach-box, or Cloak-bag, and swear that he put it there by his Lordship's Order, with a Design to convey it to his House in Town, or his House in the Country, I do not see how the best Nobleman in the Kingdom could vindicate himself against such a clear Proof of a Fact made Felony by this Bill. The noble Lord would of course therefore be found guilty, and transported as a Smuggler; and the Servant would get 50*l.* Reward from the Government, besides a much greater Reward perhaps from those who put him upon that Piece of Treachery, and furnished him with the Goods for that very Purpose.

I know, my Lords, it may be said that no Man can be absolutely safe against Treachery, and Perjury; but from all our Law Books, I defy any Man to suppose a Case where it is so easy to cook up a treacherous, yet feasible Accusation against a Man who has not been guilty of the least Imprudence, or so safe to give false Testimony as it will be in the Case I have now laid before you; for in all or most other Cases there must be a Confederacy and Combination between two or more Persons, in order to get a Man convicted upon a false Information; in which Case the Confederates are in danger of being betrayed by one another; and even the Facts themselves which are falsely sworn against a Man, often furnish him with Means for justifying himself and condemning his Accusers; whereas in the present Case, there is no need of any Confederacy, nor can the Person accused justify himself by any Means I can think of.

The Clause for making Actions of Assault upon Officers triable in any County of England, may likewise, in my Opinion, be of dangerous Consequence. It is granting a Privilege to his Majesty's Officers which is very inconsistent with the Safety of his Majesty's Subjects; and it is such a Privilege as ought not, I think, to be granted even to the Crown itself, nor ever was granted except upon very extraordinary Occasions. For when an Officer is assaulted, or pretends to have been assaulted by a Country Gentleman or Farmer, I can see no Reason why he should be at Liberty to lay his Action and bring it to Trial in any County in England, and every Gentleman or Farmer who may be assaulted by an Officer, confined to try his Action in the very County where the Assault was committed. To give to every Officer of the Excise as well

as Customs (for this Clause is carefully extended to both) a Privilege of making a Country Gentleman or Farmer, with all his Witnesses, dance from Northumberland, Wales, or Cornwall, in order to defend himself against an Action of Assault to be tried in the County of Middlesex, in Kent, or in Essex, where the Characters of the Plaintiff, Defendant, or either of their Witnesses, can neither be known nor enquired into, is, in my Opinion, contrary to the whole Spirit of our Laws, and inconsistent with the Quiet and Ease of all other Subjects; for every Jack in an Office is but too apt to be insolent and saucy to those who must apply to him; and this Privilege may, I am afraid, render our Jacks of the Custom-house and Excise Offices altogether insupportable. It is a good Luck for us that no Officer of our Army can well bring an Action of Assault against any Man, at least it is as yet reckoned inconsistent with their Honour to do so; for if it had been otherwise, I should have expected that they likewise would have been included in this bountiful Clause, which establishes such a remarkable Difference between his Majesty's Officers and his Majesty's Subjects.

The Clause for admitting Officers to Bail in the Case of Murder or killing of any Person who resists them, I must likewise look upon as a new Piece of special Grace and Favour granted to our Officers of the Customs and Excise. Indeed, in this Case the Officers of our Army may often come in for their Share, because they are generally called as Assistants to Custom-house Officers as well as to Executioners. But I am afraid this new Favour may make them sometimes imagine that Clubs, or even Fists, are offensive Weapons, and such as may be opposed by Powder and Ball; therefore I must think it of dangerous Consequence to the Lives of his Majesty's Subjects; for in such a Case, I think, the Proclamation against Riots ought, at least, to be read, in order that those who are only Lookers on, may have Time to retire: And I can see no Reason why Officers, in such a Case, might not have been left to the Course of the Common Law, as well as Gentlemen are in a parallel Case, and a Case at least as favourable; for if a Gentleman should kill a Highwayman, who assaults him and demands his Money, he must take his Fate at Common Law, and in case the Coroner's Inquest should give a wrong Verdict against him, he must lie in Prison till his Trial; but if an Officer kills a Man who did not perhaps assault him, or bring his Life into any Danger, and the Coroner's Inquest should bring it in, perhaps justly, wilful Murder; yet by this Clause his Majesty's Justices of the Peace, or any other Justices are not only empowered, but are enjoined and required, to admit such Officer to Bail; so that by these last

Last Words it would seem that there is not so much as a discretionary Power left in the Judge, if there be but the least Pretence for the Officer's being within this Clause.

I have no Occasion to explain to your Lordships the great Benefits and Advantages we reap by Trade, or how necessary it is to the very Being as well as Happiness of this Nation, therefore I shall only observe, that if we should destroy our Trade, in order to prevent Smuggling, it would indeed be an effectual Remedy, and I believe the only Remedy we shall ever find to be altogether effectual; but it would be like a Man's giving his whole Estate to his Enemies, for fear his Friends should cheat him out of a small Part of it. Now there are in this Bill several Clauses which will, in my Opinion, expose our Merchants and Seamen to many new Hardships, Dangers, and Inconveniences. I shall take notice only of that Clause, which gives Power to our Custom-house Officers to enter and rummage any Ship at Sea, if within what they may please to call the Limits of any Port in this Island. What may be meant by the Limits of a Port I do not know, but I am certain it is a Term so vague and indeterminate, that it must occasion an infinite Number of Contests between our Custom-house Officers and the Commanders of our Merchant-men; for no Master will submit to have his Ship rummaged and searched when he thinks he is not by Law obliged to do so; therefore if a Custom-house Officer should judge a Ship to be within the Limits of a Port, and the Captain should judge she is not, a Dispute, and perhaps a Battle, may infuse between the Officers and the Ship's Crew: This will subject the Captain, and, I believe, every one on Board the Ship, to an Action for 100% Penalty, in which they will every one be cast, if the Ship should be judged in Law to have been within the Limits of any Port when the Officer demanded Admittance; whereas if it should be judged otherways the Officer is made liable to no Penalty for the Assault he made upon the Ship; from whence we may conclude, that our Custom-house Officers will at last pretend to search almost every Ship that comes within the four Seas, unless the Master agrees to pay them a Tax for preventing the Trouble they may give him by rummaging and searching his Ship upon the high Seas, and when he has perhaps a fair Wind for carrying him to the Port to which he is really bound: As this will be a great Hardship upon our Merchants and Sea-faring Men, I therefore wish that a League, Half a League, or some other determinate Distance had been put instead of the Word Limits.

Upon the Whole, my Lords, I must think this Bill one of the most severe and dangerous Bills that was ever passed by a British Legis-

lature; and yet, notwithstanding its Severity, I am afraid it will be far from answering the End. I am afraid, that instead of preventing Smuggling, it will render desperate all those who shall hereafter embark in that pernicious Trade, which will make them more bold and enterprizing than they ever were heretofore; and their common Danger will unite them closer together, which will make them more powerful and formidable. While our numerous high Duties continue, while there are such Profits to be got by Smuggling, it is in vain to expect we can entirely prevent it by the most severe Laws we can make. By such Laws we may ruin our Constitution, we may subject ourselves to arbitrary Power, but even arbitrary Power itself will not prevent it; for in France where arbitrary Power has been long established, where the Punishment of every Sort of Smuggling is Death or the Gallies, where they keep up a particular Sort of Army call'd *Les Maltotiers* for that very Purpose, yet Smuggling is in that Kingdom almost as frequent as in England, and their Smugglers are much more desperate than ours; for they march in little Armies, are well armed and disciplined, and often engage in Battle with the Custom-house Officers and their Guard of *Maltotiers*. The Gentlemen of the French Army are indeed but seldom or ever employ'd in such Exploits; they consider that their proper Business is to defend their Country against open and declared Enemies; and therefore they think it below them to engage against *Banditti*, or to hunt after and guard Criminals; this low Sort of Work they look on as fit only for *Maltotiers* and *Archers* or Sheriff's Officers; and though they have a vast Number of such in France, yet with them, and with all the other Advantages they have, it has never been in their Power entirely to prevent Smuggling.

From all these Considerations I could wish, my Lords, that the Bill were delayed till another Session, when we could have Time to concert proper Clauses for the End intended, and such as would not any Way injure our Constitution, or oppress our fair Traders. Such Bills ought to be drawn up and passed with the utmost Caution and maturest Deliberation; for in passing every such Bill we are placed between two Precipices, where the least Inclination to one Side or the other may throw us head-long into a Gulph of Perdition: We may ruin our Revenue by giving too great a Latitude to Smugglers, or we may destroy our Constitution by placing too great and too arbitrary a Power in the Crown, and likewise our Trade by subjecting our Merchants to too many Dangers and Inconveniences: But if the Bill cannot be delayed, if the Disease absolutely requires some immediate Application, I hope your Lordships will agree.

agree to the Amendments I have offered; and as it is a Bill of a very new and extraordinary Nature, I hope it will not be at first made perpetual: Let us do as we always have done in most new Regulations. Let it be made to continue for 3, 5, or 7 Years, that we may have some Experience of its Effects, before we make it a perpetual Law; which is the last Amendment I shall take the Liberty to offer.

The Answer was to this Effect, viz.

My Lords, As the immediate Preservation as well as future Happiness of the Nation depends upon the Support of our Government, 'tis the Duty of Parliament not only to grant such Funds as may be necessary for that Support, but to make those Grants effectual; for the granting of any Tax or Duty would be of very little Signification, if the Parliament did not at the same Time prescribe such Methods as should be effectual for raising and collecting that Tax or Duty; and if the Methods at first prescribed should fail of the expected Success, it is for the same Reason the Duty of Parliament to contrive and prescribe such other Methods as may be thought more effectual. The imposing of any Tax or Duty, and allowing any Man, through our Neglect, to escape paying that Share of it which is due from him by Law, is not only a Breach of our Duty towards our King and Country, but a Piece of Injustice done to every particular Man in the Kingdom who honestly and fairly contributes his Share. Yea further, any Sort of Neglect in this Particular must be of the most fatal Consequence to our Trade, and must necessarily at last be the Ruin of every fair Trader in the Kingdom; and in our present Circumstances, it may likewise be called a Sort of Breach of the publick Faith; for as most of our Duties, especially in the Customs, are mortgaged, in Whole or in Part, to the Creditors of the Publick, the allowing the Produce of any of those Duties to be diminished by fraudulent Practices, when it is in our Power to prevent it, is the same with taking from them a Part of that Security which was given them by Parliament, and which the Parliament is bound to make good.

Notwithstanding all these Obligations we lie under, yet, my Lords, I shall readily agree that we ought to be extremely cautious in granting any new Powers for raising and collecting our Taxes, which may any Way encroach upon the Constitution, or upon the Liberties of the People; but if we make a Phantom of every new Power, or new Penalty, that may be really necessary for that Purpose, and give a Loose to our Imaginations, by supposing that every such Power or Penalty will be made a wrong and unjust Use of, and turned towards the Oppression and

Ruin of the Subject, instead of being applied to their Relief and Preservation, we shall never grant any new Power, nor continue the old; for no Power was ever granted, nor can be granted, upon which a fruitful Imagination may not form various Scenes of Horror and Destruction; nay, no Power can be granted, but what may truly be made a wrong Use of; but while we have a Parliament subsisting, while we are subject to no earthly Power but what is established by, and depends upon Parliament, we have no Occasion to frighten ourselves with such Chimaera's; for, thank God! our Parliaments have hitherto been able to give a Check to every wrong Use that has been made of any Power, and to bring the Offenders to condign Punishment.

With regard to the Clauses in this Bill which have been objected to, and the new Powers to be granted which have been set in such a hideous Light; before I begin to consider any of them particularly, give me Leave, my Lords, to make this general Observation, that, tho' we do not pretend to punish a Man for meer thinking, nor admit a bare Intention to be proved by Witnesses, yet we often punish a Man for speaking, and admit Witnesses to prove Words as well as Facts, in order from thence to infer a malicious Intention; and even by a late Statute we have laid a very severe Punishment upon an Intention; for we have made it Transportation for any Man to assault another upon the Highway, with an Intention to rob, whereas it was before but a common Trespass: How this Intention is to be proved I shall not pretend to determine; but I suppose, if the Man who made the Assault, uttered only these two Words (Your Money) and his uttering of such Words were proved in Court, it would be deemed a full Proof of his Intention, and that Action which in itself is but a common Trespass, would by these two ugly Words be made Felony and Transportation. But this is not the only Case where Words may be proved in order to shew the Intention of the Speaker, and convict him of the Crime for which he stands indicted or accused; for we know that in all Trials of Murder, there is nothing more common than to prove threatening Words made use of by the Person indicted, in order to shew that he had an Intention to murder; and by an Act of his late Majesty's Reign, which makes it Felony to tear or spoil any Person's Cloaths in the Streets, it is further enacted, that whoever shall wilfully and maliciously assault any Person in the publick Streets or Highways, with an Intent to tear or spoil the Cloaths of such Person, shall upon Conviction suffer as in the Case of Felony: In which last Case the Intention of the Person accused can be proved by nothing else but by some Words or Threats uttered

uttered by him before, after, or at the Time of the Assault ; for if he had proceeded to an Overt Act, if he had actually torn or spoiled the Person's Cloaths, he would be within the former Part of that Law, and consequently there would be no Occasion for proving his Intention. Nay even high Treason itself may be committed by Words without any Overt Act ; for by an Act of Q. Elizabeth, who had, I believe, as great a Regard for our Constitution as ever any King or Queen had, it is declared, that whoever shall, by any Speech, maintain the Jurisdiction of the Bishop of Rome, shall for the first Offence be guilty of a *Præmunire*, and of high Treason for the second ; and in all Crimes whatever, according to the whole Tenor of our Laws, it is the Intention only that is to be punished, which Intention must be made appear from Circumstances, and those Circumstances may consist in Words spoken as well as Overt Acts committed by the Persons accused.

With this View, my Lords, let us consider that Clause in the Bill now before us, which has been principally objected to. By that Clause it is proposed to be enacted, that if 3 or more are assembled with Fire-arms or other offensive Weapons, with an Intention to run any Goods or Merchandise, or to watch for Opportunities for that Purpose ; or with an Intention to carry off or rescue any run Goods or Merchandise, or to wound or murder any of his Majesty's Officers, a Justice of Peace, upon Information to be given upon Oath, may commit them without Bail or Mainprize ; and such Persons, if convicted, by due Course of Law, are to be transported as Felons. From these Words is it not plain what the Informer, as well as all the other Witnesses, must swear to some Overt Acts committed, or some Words spoken, by the Persons against whom they swear, or to some other Circumstances from whence this Intention may be probably inferred ? Can we suppose that any Justice would commit, or any Jury convict the Persons accused, upon the Informer's barely saying he knew they had such an Intention, without giving any Account of his Reasons for saying so ? And if he gives such Reasons as must make every Man believe they had such Intention, do not they deserve to be committed ? Can we suppose it possible that such Reasons can be given against an innocent Man ? At least I am sure it is no more possible in this Case than in any other criminal Case whatsoever. And if you think proper to make this Crime Felony, and the Punishment Transportation, it is neither inconsistent with our Constitution, nor contrary to our Laws, to have such a Person committed without Bail or Mainprize ; because, wherever such a Punishment is to be inflicted, no Bail can in any Case be taken ; the Person accused must in all such Cases re-

main in Prison till he be acquitted by due Course of Law.

As to the Rewards which are by this Act to be given to Informers, I can see no Reason why we should be more afraid of them in this Case than in any other ; for it is certain that in many criminal Cases, even where the Punishment is Death, there are Rewards given to Informers by the Laws and Customs of this Kingdom : From such Rewards we have experienced great Benefit, with respect to the discovering, apprehending, and punishing of Criminals, and we have not yet found any Danger accruing therefrom to innocent Persons, nor can any Danger be well supposed ; for if two or three Rogues should combine together, in order to accuse an innocent Man, they have generally been, and always may be made to contradict themselves, or one another, in some of the Circumstances they relate ; and the Evidence of one Man, especially a poor low Fellow, which we must suppose any such Rogue to be, will never be of Weight enough with a Jury to convict a Man of any tolerable Character. In the present Case it will be the same ; the Informer must give his Reasons for saying that the Person accused had such an Intention, those Reasons must either be Facts he saw, or Words he heard ; as to both these he may be obliged to tell all the particular Circumstances, some of which the Person accused may be able to prove false, or the false Informer may D probably be made to contradict himself, unless he has a better Memory than Liars usually have : Even if the Informer should give but this only Reason, that the Person accused told him so ; in the first Place, 'tis not very probable a Justice or a Jury would believe him without several concurring Circumstances ; but besides he would be obliged to give an Account when and where, and upon what Occasion, the Person accused told him so ; with respect to which it would hardly be possible for him to form such a Story as might appear probable, and at the same Time such a one as the Person accused could no Way contradict by proper Evidence.

With respect to the Liberty of applying to the King's Courts of Westminster-Hall, I can F not think it is by this Bill to be taken away from any of the King's Subjects, nor can I think that the *Habeas Corpus* Act is in any Case to be repealed : The Justice of Peace is impowered to commit without Bail or Mainprize, as he may do in capital Cases as well as this ; but the Trial must be before the King's Courts either in Westminster-Hall, or at the Assizes ; and I am sure it will not be pretended that any of the King's Courts ought, or would admit a Man to Bail, who upon Conviction is by express Statute to be Transported. Indeed, if the Justice should G be guilty of Error or Iniquity in the Commitment,

ment, the Court of King's Bench might in that Case give Relief, and any Person to be committed under Colour of this Bill might, in my Opinion, bring his *Habeas Corpus* for that Purpose, in the same Manner as in other the like Cases; and if the Trial of any Person to be committed by this Bill should not be brought on in the usual Time, I can find nothing in the Bill to prevent his taking the Benefit of the *Habeas Corpus* Act, and getting himself discharged in Pursuance of that Act.

Having thus shewn that no innocent Man can be in Danger either of being committed or convicted from this Clause, any more than from any other penal Law now subsisting, I may, I think, conclude, that no Innocent can be by this Bill frightened from travelling with Arms whenever he has a Mind, and therefore it cannot with the least Propriety be called a Bill for disarming the People of Great Britain. But I must take notice that even as the Law stands at present, if an Information were given to any Justice of the Peace, that a Man intended to be aiding and assisting in some treasonable Practices, whether with Arms or without, and the Informer should give such Circumstances as ought to gain Credit from a reasonable Man, such Justice would be deficient in his Duty, if he did not examine immediately into the Affair, and commit the Person informed against, if he saw any Cause for so doing; which he might certainly do even as the Laws stand at present, and therefore there is no Occasion for any new Law for this Purpose, nor would the passing such a Law be any Incroachment upon our Constitution; and if the Person impeached by any such Information should upon a fair and open Trial be convicted of Treason, the Informer would expect, and would really deserve a much better Reward than any proposed by this Bill; so that the promising of a Reward by Act of Parliament, can be of no great Consequence in any Case, because a Rogue will be as ready to perjure himself for a Reward expected and commonly given, as he will be for a Reward expressly promised by Act of Parliament.

Let us consider, my Lords, that by the Bill now before us, there are two Sorts of Offences to be corrected, which were not before made liable to any Punishment. The first is, an Assembling, to the Number of 3 or more, armed with Firelocks, or other offensive Weapons, in order to be aiding and assisting in the running of Goods or defacing of Officers; the other is, a Lurking or Loitering in any Place without Arms, but for the same Purposes; and as the former is an Offence much more heinous than the latter, therefore it is by this Bill to be subjected to a much higher Punishment; which Punishment cannot, I think, be deemed too severe; for if such Men had put their Design in Execution, if

they had been actually assisting in any such Purposes, they would be guilty of Felony by the Laws as they stand at present, and I cannot think there is any Severity in extending the Punishment to the Intention, when it is proved that a Man has armed himself and made ready for putting that Intention in Execution; for in all Crimes, it is the Intention and not the Action which is principally to be regarded; therefore the Punishment intended by the Amendment would, in my Opinion, be far from being adequate; at least if it be an adequate Punishment for this Crime, it must certainly be too severe for the other Offence of loitering and waiting without any Arms, and without assembling in such Numbers; because any Violence committed, or intended to be committed, with an armed Force, ought always to be more severely punished than the same Sort of Violence committed, or intended to be committed, without any such Force.

For my Part, my Lords, I must think that Transportation would be a very moderate Punishment for endeavouring to run Goods without paying those Duties imposed by Law, or to rescue them after they have been legally seized, even without Arms, or without an Intention to make use of any mortal Weapon; but when Men provide Arms for this Purpose, it shews they design to murder as well as smuggle; nay, I must really look upon it as a Sort of Treason; for it is in some Manner a levying of War against the King, and we know that a Consultation, advisedly held for that Purpose, has been always reckoned, and long since declared by Statute, to be high-Treason: And, further, if we consider the Numbers of Men that have sometimes assembled together in Arms for smuggling Purposes, we must have the more Reason to conclude that it is a Sort of Treason, in which Case we may with a great deal of Freedom inflict the Punishment of Transportation upon 3 or more assembling together, with any such Intention; for such a Number cannot assemble together for such a Purpose, without a previous Consultation; which is a Sort of Overt Act that may be proved, and has often been admitted to be proved, in order to convict a Man of high Treason. A Month's Confinement in a Correction House, tho' attended with the severest Sort of Whipping, which it would never be, would for these Reasons be very far from being an adequate Punishment for the first Offence designed to be corrected by this Bill, and it would be still farther from being effectual for the End intended. A raw Country Fellow, or a poor labouring Man, may for a Reward be easily drawn in to be assisting in the running of Goods, where no Force or Violence is intended, and may for that Purpose be prevailed on to loiter and wait without Arms somewhere near the Sea-coasts; for such a Man, a Month's Confinement

finement and Whipping may be a sufficient Admonition, he may be thereby reclaimed, and frightened from ever engaging again in such Practices; but he must be an experienced and a hardened Rogue who arms himself for such Purposes, and prepares to murder rather than be disappointed; it cannot well be expected that such a Fellow will be reclaimed by Whipping or hard Labour; as soon as he gets loose, and meets with his former Companions, he will probably return to his former Practices. These are the Fellows who give our Civil Government the greatest Disturbance; these are the Fellows who do the greatest Injury to the Revenue, and to the fair Trader; and these are the Fellows against whom this Bill is principally designed: As it is very difficult for the Smugglers to make up and form a Gang of such disciplined and veteran Troops, the only Way of putting an End to such fraudulent and violent Practices, is by breaking those Gangs as fast as they begin to form themselves, which can only be done by Death or Transportation; and as our present Government always chuses to try first the mildest Method, therefore the latter Method of breaking these Gangs is proposed by this Bill.

I hope, my Lords, I have now shewn, That the Clause objected to is no Way inconsistent with our Constitution, nor with the Liberty or Safety of any innocent Subject; that the Punishment proposed is so far from being too severe, that it is the mildest Punishment we can propose, if we have a Mind to provide an effectual Remedy for the Evil complained of, and that the Amendment proposed would be very far from being an adequate Punishment, or an effectual Remedy against that Evil by which we suffer the most, and against which this Bill is principally designed. These Things I am myself fully convinced of, and therefore I cannot agree to the Amendment proposed to be made to this Clause, nor to any of the other Amendments which depend upon the first.

As to the other Clauses objected to, tho' no Amendments have been proposed in relation to any of them, yet as they are Objections against the Bill in general, I hope your Lordships will give me Leave to offer some of those Reasons why I think the Objections without any solid Foundation. The Clause for punishing those who shall be found armed and passing within 5 Miles of any Sea-coast or navigable River, with more than 6 Pounds of Tea, 5 Gallons of foreign Spirits, or 30 Pounds worth of foreign Goods, landed without paying the Duties, is not properly a new Law, but only an Amendment of an old, which has hitherto been found ineffectual, and therefore this Amendment is proposed, in order to remedy the Defects of the former Law: The Punishment is the same in both, only the Description of the

Offence in the former Statute has been found to be such as could never be proved; and for that Reason it is absolutely necessary to alter that Description, and to make it such as may be proved, if you intend to prevent or punish the Offence: This is, I say, absolutely necessary, and it is impossible to imagine that a Gentleman, or any Man of an established good Character, can suffer unjustly by the Description of the Offence, even as proposed by this Clause, because a Jury will never believe one single Witness against such a Man, and it will be as difficult and dangerous for two Rogues to combine together, and contrive a feasible Accusation against an innocent Man in this Case as in any other. By the Law, as it stands at present, it is as easy for a Nobleman or a Gentleman's Servant to put a Quantity of run Goods into his Master's Coach-box, or Portmanteau, and then to inform against him, as it will be when this Bill, as it now stands, shall be passed into a Law; yet we have never yet heard of so much as an Attempt in this Way, tho' it be upwards of a Dozen of Years since the Law was passed for making it Felony and Transportation for any Man, with offensive Arms, to pass within 20 Miles of any Coast, with any Quantity of foreign Goods in his Custody, which had been landed from any Ship, without due Entry and Payment of the Duties.

The Clause which is said to establish a remarkable Difference between his Majesty's Officers and his Majesty's Subjects, is, my Lords, as necessary as the former, if you intend that any of the Officers should dare to do their Duty within some of the Counties of England; and this Necessity proceeds from the great Height Smuggling has lately come to, and the vast Numbers of Men now engaged some Way or other in that pernicious Trade; insomuch that, in some of our Maritime Counties, the whole People of the County are so generally engaged in it, that it is impossible to find a Jury that will upon a Trial do Justice to an Officer of the Revenue in any Case whatsoever; therefore unless you agree to this Clause, an Officer, in any such County, who faithfully performs the Duty of his Office, must expect to be assaulted, and beat and bruised, every Day of his Life; because the People of the County know that he never can recover a Verdict against them; in which Case I must leave it to your Lordships Consideration, whether you can expect that ever any Officer will do his Duty, in endeavouring to suppress Smuggling, or collecting his Majesty's Revenues, either of the Customs or Excise.

This Clause therefore, my Lords, I must take to be absolutely necessary; and the other Clause, in relation to the bailing of Officers and their Assistants who shall happen to

kill a Man in their own Defence, is, I think, as necessary, and this Necessity proceeds from the same Cause with the former; for in those Counties where Smuggling is become general, the Majority of the Coroner's Inquest always consists of Smugglers; so that it has been found by Experience, that those Inquests always bring the Officer and his Assistants in guilty of Murder, even tho' it be made clearly appear, by the most undoubted Testimonies, that the killing happened *se defendendo*; which must be such a Discouragement to Officers of the Revenue, and to all those who assist them, that it cannot be expected they will ever venture their Lives in putting the Laws of their Country into due Execution: Therefore in both these Cases we are not to run the Comparison between his Majesty's Officers, and any of his Majesty's Subjects, but between Officers and Smugglers; and I hope your Lordships will all agree, that the former deserve much more Favour than the latter. In the last of these Cases, if the Officer be within the Terms of the Clause, if the Killing happen *se defendendo*, I think it is most reasonable to order and require the Judge to admit him to Bail; but if he be not within the Clause, of which the Magistrate before whom he is brought for that Purpose is the Judge, then that Magistrate is neither ordered nor required by any Words in this Bill to admit him to Bail.

I shall readily grant, my Lords, that our Trade is of great Advantage to this Nation, and that we ought to take all possible Care to encourage it, and to avoid every Thing that may be inconvenient to our Merchants or Seamen. But this, my Lords, is one of my chief Reasons for being for this Bill as it stands at present; for our Trade cannot be protected if our Government be not supported, and our Government cannot be supported unless we prevent Smuggling, and all other fraudulent Practices with respect to that Revenue upon which the Support of our Government depends: Therefore the honest Merchant or Seaman must bear with those few Inconveniences which are absolutely necessary for preventing the fraudu'ent Tricks of the knavish one; and in the Bill now before us, I am not only convinced that there are no Regulations but what are necessary, but that there is no new Regulation that can subject any honest Merchant or Sea-faring Man whatever to any great Inconvenience. I am sure the putting of an Officer on board any Ship that comes within the Limits of a Port, is most reasonable and necessary, and can never be inconvenient for any Ship, unless they have a Mind to run some Part of the Cargo; for no Ship comes within the Limits of a Port, but with a View to trade there, or to run Goods on Shore, unless when she is forced thither by Stress of Weather, or Want of Pro-

visions: In the first Case, I believe no Man will say, that it is not necessary to put an Officer on board; and the last Case so seldom happens, that it cannot well be called an Inconvenience. As for the Term Limits, I take it to be a Term as well understood among Merchants and Sea-faring Men as any Term whatever: I suppose every Frith and navigable River must be within the Limits of some Port; and with respect to our Ports upon the Ocean, I suppose the Limits of each Port extends to the Place where Ships bound for that Port usually come to an Anchor, in order to wait for a Tide or fair Wind for bringing them into Port; so that no Officer can from this Clause pretend to search a Ship upon the high Seas, nor will any Officer dare to extort illegal Fees, or any other illegal Consideration; because if it should be discovered, he would certainly be dismissed, which is a Risk no Man of common Sense will run, for the Sake of any small Fee he can possibly get from the Master of a Ship who has no fraudulent Practice in View.

Whether the Bill now before us will be altogether effectual, is what I shall not pretend to determine, but it will certainly render it more difficult for Smugglers to carry on their fraudulent Practices, and more safe and easy for the Officers of the Revenue to do their Duty, therefore it will be more effectual than any Law now in being; and if it has not all the good Effect could be wished for, some new Method may be taken for answering those Cases where this Bill may appear to be deficient: But such as it is, it would, in my Opinion, be the most imprudent Thing in the World to put off passing it till next Session; for as the first Part of it contains an Indemnity for all past Crimes in the smuggling Way, if this Bill should be put off, the Smugglers would all expect the same Sort of Indemnity by any Bill to be passed in the next Session; and the Hopes of being indemnified for every Crime they could commit betwixt this and the 27th of April next, would in the mean Time render our present Smugglers more bold and enterprizing, and would make every Man who could have any Opportunity, endeavour to defraud the Publick, by some Sort of smuggling Practice, from whence we may conclude, that the Publick would suffer most prodigiously by any such Delay.

With respect to making the Bill temporary, no such Clause can be made to relate to the first Part of the Bill, which indemnifies those Persons who have been guilty of Offences against the Laws made for securing the Revenues of Customs and Excise: It can only be made to relate to the last Part of the Bill, which is to enforce those Laws for the future; and as the last Part of the Bill, and the future Security his Majesty expects may arise from thence, with Regard to the Revenue, is the

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Consideration for those large Sums his Majesty gives up by the first Part of the Bill, it would be both unequal and unjust to make the last Part temporary, since the first must be made perpetual.

I am afraid, my Lords, any Amendment we can make, may occasion the Loss of the Bill for this Session at least, and therefore we ought to make as few as possible. I do not think there is one absolutely necessary; but if your Lordships think otherwise; if you think it necessary to add a saving Clause for the Court of King's-Bench, and Court of Justiciary in Scotland, with Regard to the bailing of any Person committed by Virtue of this Act, I shall readily give up my Opinion, and agree to the Amendment, but I cannot agree to any of the other Amendments that have been proposed.

To this it was replied in Substance as follows, *viz.*

My Lords, We are all fully sensible that it is the Duty of Parliament to grant a Revenue sufficient for supporting the Government, and to contrive and prescribe such Methods for raising and collecting that Revenue as may be effectual; but we likewise know it is the Duty of Parliament to support the Constitution, and preserve the Liberties of the People. Therefore when it begins to appear, that the Methods prescribed by Parliament for raising the Revenues necessary for the Support of our Government, are not effectual for the End intended, nor can be made so, without endangering our Constitution, those Methods ought not to be further pursued, but Methods entirely new ought to be contrived and prescribed by Parliament. This is, I am afraid, our Case at present; many of the Taxes we have established, are so very high, in Proportion to the prime Cost of the Commodities upon which they are laid, that we find it impossible to get them duly raised and collected, without giving such arbitrary Powers to our Government in that Respect, as may very probably render it arbitrary in any other; and if this be our Case, we ought to think rather of lowering or abolishing some of our Duties, and raising our publick Revenues in some other Method, than of transporting and hanging our People, who are made Criminals by the Temptations we have thrown in their Way. But whatever may be thought fit to be done in our present Circumstances, I am glad to hear it insinuated by the noble Lords who are against these Amendments, that our publick Creditors have any Sort of Right or Concern in the levying of those Taxes which were established for their Security, and appropriated to their Payment; for if they have any Concern in the levying of them, they have a much greater Concern in the Application of them; and therefore if it be a Breach of

publick Faith to allow the Produce of those Duties to be diminished by fraudulent Practices, when it is in our Power to prevent it, it is certainly a greater Breach of publick Faith to apply them to any other Use but that for which they were originally designed; because in both Cases a Part of that Security which was given by Parliament to the Creditors of the Publick is taken from them, but in the former Case it is only a Sin of Omision, whereas in the latter it is a Sin of Commission, and is therefore the more heinous.

It is always with Regret and Sorrow, my Lords, that I form to myself any Apprehensions of Danger to my native Country, and therefore I shall always avoid it as much as possible; but we have already created so many new Crimes and Transgressions, relating to our Revenues of Customs and Excise, and have inflicted so many new Pains and Penalties for preventing those Transgressions, that, in my Opinion, the Fears of increasing them can in no Case be called Phantoms. Our Parliaments have, 'tis true, been hitherto able, generally speaking, to give a Check to every wrong Use of any Power, and to bring the Offenders to condign Punishment; and while our Parliaments continue to be independent of those who have the Exercise of Power, their Will, as well as their Ability, will continue the same; but we know the Effect of Pains, Penalties, and Pensions, in other Countries; we know that Parliaments, Senates, or Assemblies, have, by such Means, been made subservient to the worst and most tyrannical Uses that could be made of Power; and if this should ever unfortunately happen to be our Case, our Parliaments will neither be willing nor able to check the Abuse of any Power, nor to punish the Offenders. For this Reason we ought to be extremely jealous of loading our People with Pains and Penalties, or subjecting them to a Multitude of penal Laws; for Oppression may be easily cloaked under Colour of an Act of Parliament, and many may be hanged or transported under Pretence of their having been guilty of some Action made penal by Statute, without raising any general Murmur among the People, or giving the Alarm to those who do not then think themselves in Danger of any such Prosecution; whereas the least Act of Oppression, without any such Pretence, would raise a general Murmur, and give an universal Alarm, because every Man in the Kingdom would think himself in Danger. In this Nation no Man of common Sense will extend his Power of Oppression to any great Length till he has got a Parliament to his Mind, but when he has got such a Parliament, his Power will then be without Control, and by subjecting Multitudes of our People who have Votes at Elections to high Pains and Penalties, or to the Danger of being prosecuted upon

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penal Statutes, we may render it easy for a Man to accomplish this End, which, when once accomplished, may be, by the same Methods, easily preserved as long as he pleases; for such a Parliament will never refuse to pass any penal Statute he thinks fit to propose.

No Law can be proposed, my Lords, for the Necessity of which some Reasons may not be urged; even the most tyrannical Laws have been made under Pretence of preventing or punishing some real Abuse; but all wise Nations have chosen to allow an Abuse to escape unpunished, rather than to make such a Law as might involve the Innocent in the same Punishment with the Guilty. In this Respect we have been always so cautious, that, tho' the Intention be principally regarded in all Crimes, yet we have never yet made a Law for punishing in a severe Manner, a bare Intention, unless when accompanied with some unlawful Action: Indeed if a Man has committed any illegal Action, our Laws in some Cases allow his Intention to be inquired into by Witnesses; and Circumstances, or even Words uttered by him may be proved, in order to heighten his Punishment; but no Words can by any of our Laws subject a Man to such a severe Punishment as that inflicted upon Felony, unless those Words be accompanied with some Sort of Action which is in itself unlawful, or pronounced in such a solemn and deliberate Manner as to imply a Sort of Action; and the Reason of this is plain, because no Subject could be safe or easy, if Words spoken by him, perhaps at random, or before but one Witness, could be picked up, and proved against him, in order to convict him of Felony; for in such a Case a Man's Words might often be mistaken, or unfairly related by those that hear him, and no Man could guard against Perjury, nor have an Opportunity of justifying himself against a false Accusation: If ever any such Custom or Law should come to be established in this Kingdom, the Happiness and Security of our People would be at an End: We might expect some Time or other, to have Informers as numerous and frequent in our Streets, and in all our publick Places, as ever the *Delatores* or Informers were about *Rome* under their most tyrannical Emperors.

The very Cases mentioned by the noble Lords who have spoke upon the other Side of the Question, evince what I have said to be the standing Maxim of the Laws of England. In the Cause of Murder, the killing of a Man, which is in itself an unlawful Action, must be proved, and then threatening Words or other Circumstances may be proved, in order to shew that That unlawful Action was committed with an Intention to murder: In an Assault with an Intention to

rob, or to tear a Person's Cloaths, it is the same; the Assault is in itself an unlawful Action, and the Intention is allowed to be proved only to aggravate the Punishment. In Treason, a Consultation or Conspiracy to murder the King is a Sort of Overt Act, and the Manaer how that Consultation was held must be proved; for it would be no sufficient Proof in this Case for Informers or Witnesses to say, that they had heard the Prisoner say he intended to murder the King, or that he had had a Consultation for that Purpose: And the Statute of Q. Elizabeth clearly shews, how cautious we have always been not to subject Men to any heavy Punishment on Account of any Words they may unadvisedly utter; for before a Man can be made liable to any of the Penalties of that Statute, it must be proved not only that he maintained, but that he advisedly maintained the Jurisdiction of the Bishop of *Rome*; in which Case the Manner of his speaking, the Place where he spoke, and several other concomitant Circumstances must be made appear to the Court, in order to shew that what the Prisoner said was advisedly said; and when such a Proof is laid before any Court, it cannot be called a Proof of Words only, but is likewise a Proof of several Facts which accompanied the pronouncing of those Words. So in a late Statute, where Words are made criminal, we may see how cautiously our Laws are in such Cases penned; for it is enacted, that where any Person shall maliciously and directly, by preaching or advised speaking affirm, that the pretended Prince of *Wales* hath any Title to the Crown, such Person shall incur a *Præmunire*; in this Case likewise the Informers or Witnesses must give an Account of the whole Circumstances attending the Words spoken, in order to shew that they were maliciously, directly, and advisedly spoken; and as a farther Security for the Subject against false Accusations, it is by the same Act provided, that no Person shall be prosecuted for Words so spoken, unless Information be given on Oath in 3 Days after the Words spoken, and the Person prosecuted within 3 Months after the Information given: In both these Cases therefore, the Words made criminal, imply a Sort of Action; for several concomitant Facts must be proved, in order to shew that the Words were advisedly spoken.

Let us now, my Lords, compare these Cases with the Case now before us. The Words of the Bill now before us are, That upon Information to be given upon Oath before any one or more Justices of the Peace, that any Persons to the Number of 3 or more, are or have been assembled for the Purposes aforesaid, and are, or have been armed with Fire-arms or other offensive Arms or Weapons, such Justice may grant his Warrant, and upon

upon such Persons being brought before him, may, if he upon due Examination finds Cause, that is, if he thinks fit, commit them to the next County Jail, without Bail or Main-Prize, till discharged by due Course of Law. Then come the Words for their Trial and Condemnation, which are, That such Persons upon due Proof of their being armed and assembled, in order to be aiding, and assisting in the clandestine running, landing, rescuing or carrying away prohibited or uncustomed Goods, and upon Conviction thereof, shall be adjudged guilty of Felony. Do not your Lordships see, that in this Case Men are to be committed for a bare Intention, without their having deserved being brought into that Jeopardy by any one overt illegal Act whatsoever? I shall grant that if the Justice understands the Spirit of our Laws, and acts justly, he will examine the Informer narrowly as to Circumstances, and will not commit unless the Informer gives good Reasons for saying, that those he informed against had such an Intention; but the Words of this Clause make no such Precautions necessary: We are not now to enquire what the Justice ought to do, but what he may do, and I will say, that by these Words an Information upon Oath that such Persons were assembled and armed with such an Intention, without assigning any Reasons, without relating any Circumstances, will be a sufficient Authority for the Commitment, and will excuse the Justice from all the Penalties of false Imprisoament; therefore if the Justice has any Malice against the Persons brought before him, or has a Job of his own to gain by it, or be a Tool of those that have, are we not to suppose that he will commit the Persons against whom he has such an Information? And may we not suppose that such Informations may be cooked up, and Persons of great Note committed, in order to carry an Election for Members of Parliament?

Then as to the Trial, my Lords, is not here a Man to be tried, and brought into great Danger of being condemned, and for no less Crime than Felony, upon a bare Intention, and without his having ever deserved to be brought into such Danger by any overt illegal Act whatsoever? Can we say that any Subject is safe, who may upon a malicious Information, which he cannot disprove, be brought into such Danger? I say, my Lords, an Information which he cannot disprove, for this will always be the Case. Suppose 3 Gentlemen out a shooting, or travelling upon the Road with Arms for their Defence: Suppose they meet a malicious or an avaritious Rogue in the Fields, or upon the Highway, and ask him several Questions about the Game in that Neighbourhood, or about the Roads? May not that Rogue go before a Justice and

A inform, that they then told him they were upon the smuggling Lay, and offered him Money to join with them? I should be glad to know how these 3 Gentlemen could disprove this Information. I could suppose 20 such Cases without any very fruitful Imagination: But in this Case, let us suppose further, that some Persons at a Distance saw these 3 Gentlemen speak to this Rogue, and were brought to prove this Circumstance upon the Trial; that a Ship was then hovering upon the Coast, and some run Goods found concealed the very next Day near the Place: Would not these Circumstances contribute greatly to the Conviction of the Gentlemen? Nay, the Rogue himself might mention every one of them in his Information, in order to convince an honest Justice. My Lords, it is a most dangerous Situation for any Man to have his Estate and Liberty depending upon the Opinion a Jury may conceive of his Character in Opposition to the Oath of another Man: And in this Case it is more dangerous than any other; because a Man, otherwise of the best of Characters, and of opulent Circumstances, may be presumed to have had an Intention to smuggle, whereas no Jury would presume or easily believe, that such a Man could have an Intention to rob upon the Highway, or to tear People's Cloaths: Then with respect to the Informer, if he were a low mean Fellow, no Jury would believe that any Man would attempt to rob him upon the Highway, nor would a Jury easily presume that a Man of good Circumstances would impart to him his Intention relating to any other Crime; but in Smuggling, Men of the best Circumstances often employ mean Fellows, and therefore a Jury may the more easily presume, that such a Fellow was in that Case privy to the Design of the richest Man in the Kingdom. Thus your Lordships may see what Dangers, what undeserved Dangers, the best of the King's Subjects may be brought into by this Clause; and here are none of those cautionary Words, none of those cautionary Provisoes, which are in any of our penal Statutes relating to Words: If a Man's Intention to smuggle is to be taken from Words spoken by him, it is not made necessary to prove that those Words were directly or advisedly spoken; nor is there any Limitation as to the Time when the Information is to be made, or the Prosecution commenced: An Accusation may be contrived, and Witnesses prepared to prove, that a Man had such an Intention at a certain Time 10 Years before; in which Case it will be impossible for him to remember, much more to prove, where he was, with whom he was, what he was a doing, or any other Circumstance that can contribute to his Vindication.

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I hope I have set this Danger in so clear a Light,

Light, that your Lordships will think it a Danger to which the People of this Kingdom ought not to be exposed, for the Sake of collecting any Duty they have now the Misfortune to labour under, even tho' Informers were not to be encouraged by any Reward either promised or expected: There are many Causes from whence false Accusations may arise besides Rewards in Money: Private Malice, private Law-suits, Contests about Elections of any kind, and that which is the most dangerous of all, the Spleen of a Minister against those who oppose him strenuously in the worst of his Measures, may propagate false Informations, when it is made so easy to contrive them, so as to render it impossible to convict the Informer of Perjury, or to sue a Tool of a Justice for false Imprisonment; and when Men are exposed to such Dangers, when Men are by Law made liable to such false and vexatious Informations at the Suit of the Crown, you cannot expect that any private Man will act boldly and strenuously in any Election for Members of Parliament against that which is now called, and may sometime hereafter be properly and truly called the Court Interest. But this Danger, great as it is, is greatly enhanced by the following Clauses, which pledge the Publick Faith, and give to every Informer, who shall be so cunning as to convict his Man, a Title by Act of Parliament to a Reward of 50*l.* for every Man he shall so convict. Such Rewards are in all Cases dangerous: We have already had Instances of false Informations made for the sake of the Reward, in the Case of Robbery, where it is very difficult to set up any such Prosecution; some have been already discovered, but we are not sure that all such have. If there were no Difference between a Reward expected, and a Reward promised, there would never be an Occasion to promise any such Thing; but in either Case, I say, a Reward is of the most dangerous Consequence, when promised to, or expected by a Man who is to be an Evidence against the Prisoner, and not to be entitled to any Reward unless the Prisoner be convicted; therefore such Rewards ought neither to be promised nor given but upon very extraordinary Occasions; and in every Case where the Witness does but expect a Reward, either upon the Acquittal or Condemnation of the Prisoner, it is certainly, by all the Laws in the World, a good Reason for giving no Credit to his Testimony.

Whether a Man, who may be committed by Virtue of this Clause, will be intitled to his *Habeas Corpus*, is what I shall not now enquire into, since it seems to be agreed to add a saving Clause; but can it be thought that it is no Hardship upon a Man to lie in a Jail till he can be relieved by the Court of King's-Bench, which may, when he is at a

great Distance from London, be above two Months; and yet not to have it any way in his Power to punish the Justice who committed him without a just Cause, nor the Informer who swore falsely against him? Therefore I hope your Lordships will not think that a saving Clause with respect to Bail will be sufficient to guard the Subject against the Injuries that may be done them by Means of this Clause, should it pass into a Law.

A From what I have said, my Lords, I think it is now evident that if this Bill passes into a Law, it will be dangerous for any Man in the Kingdom to travel with Arms, and therefore it may, as was said in the Beginning of the Debate, be justly called a Bill for disarming the People of Great Britain, in order to preserve their Liberties, and make them pay their Taxes; I hope it never will, but it certainly may, be made a Precedent for such another Bill with regard to treasonable Practices; and here I must take Notice, that if an Information were given upon Oath to a Justice, that a Man had armed himself in order to assist in treasonable Practices, it would be the Duty of the Justice to enquire into the Affair; but unless it appeared by the Oath of some Person or other, that that Man had actually committed, or was suspected to have actually committed some Sort of treasonable Practice, the Justice could not commit him; for by our Laws, as they stand at present, there is no such Thing as swearing the Peace in Cases of High Treason; and therefore upon great and dangerous Emergencies, there is always a temporary Law passed, for enabling his Majesty to secure those Persons he shall suspect to be conspiring against him.

B With regard to the Offences intended to be corrected by this Bill, I must think that the Punishment inflicted upon the last is severe enough for the first: I shall grant that a Man who is convicted of having actually been aiding or assisting in the running or rescuing any prohibited or uncustomed Goods, and was armed for that Purpose, deserves to be made guilty of Felony and transported; but I cannot think the Intention to smuggle with an armed Force, ought to be subjected to the same Punishment with the Crime itself, especially when that Intention is not manifested by any one illegal Act. An Intention to commit Felony is seldom or never equally punished with the Crime itself; even in the late Act against Robbery, an Assault with Intentions to rob, is not made liable to the same Punishment as if the Robbery had been actually committed, tho' the Intention be manifested by an overt illegal Act; and tho' the Smugglers may perhaps be as loth to part with a disciplined Gang as we are to part with a disciplined Regiment; yet I shall never be for declaring any one of my Countrymen guilty of Felony, upon a Suspicion, or even the clearest

Proof, that he intended only to be one of that Gang, but had never engaged in any Action, so far as was made appear to me; I think it is Time enough to do this, when he is proved to be a Veteran, by having been at least once in Action; and as the sending them for a Month to a Correction-house, will prevent their executing their Intention at least for that Time, and as this may be repeated by the Diligence of the Officers and Magistrates, as often as they form any such new Intention, I hope it will be in a great Measure effectual, therefore I am for making it the only Punishment; for tho' I am against Smuggling as much as any Lord in this House, yet I have such a tender Regard for my Countrymen, that I cannot agree to subject the Innocent to great and unavoidable Dangers, for the sake of punishing the Guilty.

Now, my Lords, with regard to the other Clauses objected to, give me leave to make some Observations upon the Excuses that have been made for them. As to the Clause for making Smugglers of all those who shall be found passing with more than six Pounds of Tea, 5 Gallons of Spirits, or 30*l.* worth of any other Foreign Goods, without a Permit, or without having paid the Duty; if it be designed only as an Amendment of a former Law, it clearly shews how fast we improve in rendering our Laws severe, arbitrary, and dangerous. The Law here referred to is, I suppose, that which was passed in the 8th of his late Majesty's Reign, by which it is, among other Things, enacted, That all Persons passing, knowingly and wittingly, with any Foreign Goods, landed from any Ship, without due Entry, and Payment of the Duties, in their Custody, within 20 Miles of our Coasts, and shall be more than 5 in Company, or shall carry any offensive Arms, or wear any Vizard, or other Disguise, when passing with such Goods; or shall forcibly hinder the Officers in seizing them, shall be guilty of Felony, and be transported. This Law is, and was at the Time of passing, deemed a severe Law; but let us examine the Provisions here made for the Security of the innocent Subject: It must be proved that the Person accused was passing with such Goods, knowingly and wittingly, that is, it must be proved not only that the Goods taken in his Custody were run Goods, but that he knew them to be run Goods, and it must be expressly proved that the Goods were in his Custody: It must be proved, I say, that the Goods taken in his Custody were actually run from some Ship, without due Entry and Payment of the Duties; and it must be proved that they were seized within 20 Miles of the Sea-coast, and not in any Inland Part of the Kingdom; and further it must be proved that the Person was actually passing from some Sea-coast, and not from one Inland Town to another.

These are such Proofs, my Lords, as, it cannot be supposed, could be made against an innocent Man; but every one of these Safeguards for Innocence is by this amending and improving Clause left out; for by this new Clause, if a Gentleman with Pistols before him be found riding, almost in any Part of England, in Company with another Man, who has got 7 Pounds of Tea, or 30 Guineas worth of Lace in his Cloak-bag, and who cannot prove that the Tea or Lace was duly entered, and the Duties regularly paid, that Gentleman, be what he will, is a Smuggler, and guilty of Felony, within the Words of this new Clause, tho' he did not so much as know that his Companion had any Goods or Merchandise in his Custody. The Officer who seizes and prosecutes, has no Occasion to prove that the Goods were in the Gentleman's Custody, or that he knew any Thing of such Goods being in his Companion's Custody: The Officer has no Occasion to prove that the Goods were actually run; but the Gentleman must prove that the Duties were paid, which will in all such Cases be impossible for him to do, nay, tho' his Companion was really an honest Man, it may be impossible even for him, to prove that the Goods were entered, and the Duties paid; for if he bought them from a Shopkeeper, who was a Smuggler, that Shopkeeper would certainly deny that he sold any such Goods: And lastly the Officer has no Occasion to prove that the Gentleman was passing from any Sea-coast, or that the Goods were seized within 20 Miles of any Sea-coast; if the Gentleman was only passing from one Inland Town to another, but unluckily happened to be within 5 Miles of any navigable River, which includes many Inland Parts of England, when the Goods were seized, he thereby forfeits his Estate and Liberty, and even exposes his Life to great Danger; for it is not quite so safe, with respect to a Man's Health, to travel to any Part of the West Indies, as to travel to Montpelier or Naples; and when a Man has forfeited his Estate, without making any Provision beforehand, which an innocent Man will never think of, it is not to be supposed that he can have the Conveniences necessary for preserving his Health in his Travels.

With regard to the Clause relating to Assaulls upon Officers, I must still look upon it, my Lords, as a most extraordinary, and a most dangerous Clause, notwithstanding the Excuse made for it; because it is not confined to Assaulls made by Smugglers upon Officers, or to Assaulls made upon Officers, in the Execution of their Office; but it is a most general Clause, and comprehends every Quarrel or Combat that shall happen, at any Time, or in any Place, between any one of his Majesty's Subjects, and any one of his Majesty's Custom-House or Excise Officers; and it will certainly

certainly encourage those Officers to provoke People to assault them, in order that they may, from thence, have an Opportunity to extort Money and raise Contributions upon those they have so provoked. Then again, the Cause assigned for granting such a Privilege to Officers, is founded upon a Presumption which neither can nor ought to be presumed: To presume that a County or a Jury, will not do Justice, may be made a Foundation for extending this Privilege to all Actions and Prosecutions that shall be brought against, as well as to all that shall be commenced by any of his Majesty's Officers; and thus I do not know but we may at last go so far as to have all such Actions and Prosecutions determined before the Commissioners of the Customs or Excise, and them only. *Principia obla* is a good Rule in all Cases, and I think there is a Necessity for observing it in this. The other Clause with respect to Bail is established upon the same wrong Foundation; and is an Alteration of the common Law, which may be of the most dangerous Consequence; for we know how apt Justices of Peace may be made to favour Officers, and to judge, that they are within this Clause, even when they have committed the most cruel Murders.

As to our Trade, my Lords, I will aver that there is no Nation in the World, where Merchants are subjected to so many Burthens, Dangers, and Inconveniences, upon Import and Export, or where the Laws relating to Trade, foreign and domestick, are so voluminous and incomprehensible, as they are in this; and if we go on at the same Rate, a Captain of a Ship will at last be obliged almost to load his Ship with Acts of Parliament, before he can be fully apprised of all the Duties he must pay, and all the Directions he must observe, with respect to the Importation and Exportation of his Goods. I wish we would consider this while we have some Trade remaining; but it does not seem to be much considered by this Bill; for it will certainly be a great Inconvenience to a Master of a Ship to have his Hatches opened, his Cabin, and his Ship between Decks summaged, and all the Boxes and Bales that may be there turned Topsy-turvy, when he is lying at Anchor, within what may be called the Limits of a Port, waiting for a calm Sea and a fair Wind. The avoiding of this Inconvenience will make Masters keep their Ships out at Sea in a Storm, when they might safely come to an Anchor within the Limits of some Port, and may consequently prove the Loss of many a British Ship: And to pretend that Officers will never run the Risque of exacting illegal Fees or Perquisites, or that such Officers will always be dismissed, is pretending to that which is contradicted by daily Experience; for wherever there is any such Op-

portunity given, we find it is always taken hold of, and sometimes most oppressively used.

Thus, my Lords, I think I have shewn, that every one of the Excuses made for the Clauses objected to, is without any Foundation; and as the Bill in general is of a most dangerous Nature, it ought, I think, to be delayed till another Year. In this there can be no Danger; for no Man can depend upon such a Bill's passing even in the next Session, nor can any Man depend upon that Bill's containing such an Indemnity as this does; and it would be ridiculous to imagine, that any such Indemnity, to be then passed, would be granted for all smuggling Crimes to be committed before the 27th of April next; therefore no Man can by such Hopes be induced to engage, in the mean Time, in any smuggling Practices.

To imagine that the latter Part of this Bill is any Sort of Consideration for that Indemnity which is granted by the first, is, in my Opinion, not consistent with that Respect which is due to his Majesty; for no Act of Grace or Mercy which proceeds from the Crown, ought to be presumed to flow from the Expectation of any valuable Consideration, but from his Majesty's Wisdom and Goodness only; therefore the latter Part may be made temporary without doing any Injustice to the Crown: And if we were to look upon the second Part as a Consideration for the first, as it stands at present, I must think it a Consideration of a Value by much too considerable; for exposing the Constitution to Danger, or the Innocent to suffer, if it were but for one Year, is, in my Opinion, too valuable a Consideration to be given for an Indemnity to all the Rogues in the Kingdom.

As for the Fears which have been expressed that any Amendment we may make, may prove the Loss of the Bill for this Session at least, there cannot be the least Ground for them; for surely we may make what Amendments we please to any Act of Indemnity; and if the latter Part of the Bill be of the Nature of those Bills, which, it is pretended, we cannot amend, it ought to have been made a separate Bill, it ought not to have been tacked to a Bill of Indemnity; therefore, my Lords, in order to put an End to such Pretences, or at least to such Practices, we ought, I think, to make as many Amendments as we can possibly find any the least Occasion for.

Besides the Amendments above mentioned, to which only this Debate related, the following Amendment was offered by the E—l. of S—d, viz. Page 30th, Line 13th, leave out from (notwithstanding) to (and) in the 26th Line.

Which Amendment was likewise agreed to in the Committee, but flung out upon the Report;

Report; and after all the Amendments made by the Committee were thus disagreed to, then the last Clause now standing in the Act, relating to the Court of King's-Bench and Court of Justiciary, was proposed to be added, which was accordingly agreed to; and next Day, *viz.* May 19. the Bill was read a third Time and passed, upon a Division, *Contents* present 36, Proxies 18, in all 54. *Not Contents* present 32, Proxies 14, in all 46, whereupon several Lords enter'd their Protest, (which see in our Magazine for May last, p. 263.)

The Speakers in the several Debates which happened in the H—se of L—ds, on Occasion of this Bill, were as follows: *viz.* Against the Bill or for the Amendments were the L—d Ch—r, the L—d H—ch, the L—d C—r, the L—d B—f, and the E—l of S—d; and those who spoke for the Bill, and against the Amendments, were the D—ke of A—l, the E—l of I—x, the E—l of Cb—ey, and the L—d H—ey.

On May 20. this Bill was returned to the H—se of C—ns, when they took into their Consideration the Amendment made by the H—se of L—ds; and the said Amendment being twice read, Mr. S—r stood up and acquainted them, That when any Thing occurred which might any way look like an Incroachment upon the Privileges of that House, he thought it was his Duty to lay the Case impartially before them, and then to leave the House to do in it as they should think fit. That in all Bills by which any Tax or Duty was to be imposed upon the Subject, it was the undoubted Privilege of that House, and they had always insisted upon it, that the other House should not make any the least Amendment to any such Bill; but were in all such Cases either to pass the Bill without any Amendment, or to reject it if they thought fit: That as the Taxes and Duties granted by that House could not be raised or collected without prescribing proper and effectual Methods for that Purpose, therefore in all Bills for imposing any Tax or Duty upon the Subject, certain Methods had been prescribed, for effectually raising that Tax or Duty; and if the Method prescribed should afterwards by Experience be found ineffectual, new Methods had always been contrived, and proper Bills passed for establishing those new Methods; which last sort of Bills had generally been looked on as an Appendix or Appendizes to the first Bill by which the Tax or Duty was granted; therefore such Bills were looked upon as Bills of the same Nature with the first, and consequently that House had generally insisted upon it, that the other House could not make any Amendment to this last sort of Bills, no more than they could have done to the

Bill by which the Tax or Duty was granted; That as the Bill then before them was for enforcing the Laws made for securing the Revenues of Customs and Excise, it was proper to be considered as an Appendix to the Laws by which those Revenues were originally established; and as the other House had made an Amendment to it, he did not know but their making any Amendment to such a Bill, might be looked on as some Sort of Incroachment upon the Privileges of that House; for which Reason he thought it his Duty to state the Case to them, before they proceeded to take the Amendment into their Consideration. That he had searched the Journals of the House for Cases of the same Nature, and would read such of them as he thought most applicable to the Case then before them.

Upon this several Journals of the House were read, relating to Amendments made by the H—se of L—ds to Money Bills, or Bills of the same Nature; and after reading those Journals, there was a Debate in the House in relation to their Privileges; but at last the Question was put for agreeing to the Amendment, which was carried in the Affirmative, and Mr. Attorney General was ordered to carry the Bill to the L—ds, and acquaint them, that That House had agreed to the Amendment made by their Lordships.

Motion for the Repeal of the Test Act, and DEBATE thereon.

On March 12. a Motion was made in the H—se of C—ns, by W—r P—r, Esq; That an Act made in the 25th Year of the Reign of K. Charles II. intituled, *An Act for preventing Dangers which may happen from Popish Recusants*, might be read; and the same being read accordingly, a Motion was made by the same Gentleman, that Leave might be given to bring in a Bill to repeal so much of the said Act, as obligeth all Persons, who are admitted into any Office Civil or Military, to receive the Sacrament of the Lord's Supper, within a Time limited by the said Act, and for explaining and amending so much of the said Act, as relates to the Declaration against Transubstantiation.

In both these Motions, he was seconded by Sir W—d L—n, Bart. but the last Motion being opposed, a long Debate ensued, in which the Arguments for the Motion were in Substance as follows, *viz.*

Sir, I believe all the Gentlemen that hear me may easily judge, with what View I have desired this Act to be read to you. It is, Sir, with a Design to have some Part of it repealed, and another Part so amended and explained, as to make it consistent with that Charity and good Nature which every Member of the Christian Religion ought to shew to another; but before I make a Motion for that

that Purpose, I must beg Leave to give you some of those Reasons which have induced me to be for what I am now going to propose.

The Motion I am now to make, Sir, proceeds chiefly from these 3 Considerations, That I am, and I hope shall always be, an utter Enemy to all Manner of Persecution; that I have a great Regard and Reverence for that solemn and religious Institution called the Sacrament of the Lord's Supper; and that I shall always be for every Thing which I think may tend towards establishing and preserving the Unity, Peace, and Trade of my Country. These are Considerations which I am persuaded are of as great Weight with every Gentleman in this House as they are with me; and therefore, if I can shew that there is any Thing in this Act that looks like Persecution; if there is any Thing in it that brings a Contempt upon that holy Institution of our Religion, the Sacrament of the Lord's Supper; or if there is any Thing in it inconsistent with the Unity and Peace of our People, or with the Trade of our Country, I make no Doubt of having the unanimous Assent of this House to the Repeal and Amendment I am to propose; and, in my Opinion, it would contribute greatly to the Glory of this Generation, as well as to the Honour of this House of Commons, to have it agreed to *nemine Contradicente*.

I hope, Sir, it will be granted me, that the subjecting a Man to a great Penalty if he refused to subscribe to an Opinion which he thought inconsistent with the Christian Religion, or to join in any Ceremonies of publick Worship which he thought sinful, or perhaps idolatrous, would be a very heavy Persecution; and I hope it will likewise be granted, that to render a Man upon any such Account incapable of holding a Land Estate, or of succeeding to any Estate as next Heir or next of Kin, would also amount to a high Degree of Persecution: Now in this Statute which has been read to you, there is one Clause which enacts, That all Persons that shall bear Office Civil or Military, or receive any Salary or Wages by any Grant from the King, or shall have Command or Place of Trust from or under him, or shall be in his Navy or Household, in England, Wales, Berwick, Jersey, or Guernsey, shall not only take the Oaths of Supremacy and Allegiance, in the next Term, or at the Quarter-Sessions, within 3 Months after their Admittance, but shall receive the Sacrament of the Lord's Supper according to the Usage of the Church of England, of which they are to deliver a Certificate, and make Proof, at the Time of their taking the said Oaths; in Failure of which they are *Ipsa Facto* disabled to enjoy the said Offices or Employments, or any Profit thereby: And by another Clause, Persons beyond the Seas,

or under any of the other Impediments there mentioned, are to receive the Sacrament and take the said Oaths, within 4 Months after such Impediment removed. By this Regulation it is evident, that no Man can hold or enjoy any Office or Employment, Civil or Military, without declaring himself a Member of the Church of *England* as by Law established;

A and as there are great Numbers of faithful Subjects who have the Misfortune of believing that some of the Opinions established by our Church are not entirely consistent with Christianity, and that some of our religious Ceremonies tend towards Idolatry, such Men cannot religiously and sincerely communicate with the Established Church; upon which Account, and upon that only, they may therefore be subjected to Penalties, or deprived of a yearly Revenue, according to the Nature of the Office they may be named or intitled to; for if the Post or Office be such a one as is attended with Trouble only, there is generally a Penalty upon a Man's refusing to serve it; which Penalty every Man must pay who is not a Member of the Church of *England*; because by this Clause he is debarred from serving the Office; whereas if it were not for this Incapacity he is laid under, he might probably chuse to serve the Office rather than pay the Penalty; and I would be glad to know the Difference between subjecting a Man directly to a Penalty for refusing to join in any religious Opinion or Ceremony, and this indirect Manner of subjecting him to it, by tacking to an Office, in itself merely temporal, a most solemn Approbation of all the religious Doctrines and Ceremonies of the Established Church.

B Again, Sir, if the Post or Office to which a Man is named or intitled, be one of those to which a yearly Salary or Revenue is annexed, from the Day of his Nomination he has as good a Right to receive the Profits of that Office as any Man has, or can have, to his Ancestor's Estate, they being both founded chiefly upon the Law of the Land; nay, it often happens, that the Person named to any Post or Office has by long and faithful Services fully deserved that Nomination; and this I take to be a more favourable and meritorious Title, than the Title any Man can have to the Estate of his Ancestor or next Relation. Suppose we should have a new foreign War of ten Years Duration, as we had in the late Queen's Reign; suppose a Gentleman of the Dissenting Persuasion should in the Beginning of that War go abroad a Cadet in one of our Marching Regiments, and in Consideration of much Blood lost, and many brave Services performed in the Cause of his Country, should be advanced and made at last Colonel of the Regiment, would not such a Man be fully entitled to the Profits of his Com-

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Commission, during the Time his Majesty should think fit to continue him in Command? Would it not be downright Persecution to turn him out of his Commission, and reduce him to a starving Condition, thereby for the Sake of a Scruple of Conscience? Yet the Case would be so, if this Law should be then in force: Upon the first Return of the Regiment to *England*, he would be obliged, within 4 Months, to give up his Regiment, or receive the Sacrament of the Lord's Supper, according to the Usage of our Established Church, which his Conscience would not permit him to do, if he should happen to be a rigid and sincere Dissenter. This, Sir, I should look on as a higher Degree of Persecution than it would be to turn a Man out of an Estate which he had really purchased with his Money, because I shall always look upon Merit or faithful Services to be a more valuable Consideration, than a full Price paid in ready Money; and therefore I must look upon it as a much higher Degree of Persecution, than it would be to render a Man, on Account of any religious Opinion, incapable of holding a Land Estate, or of succeeding to any Estate as next Heir, or next of Kin.

From what I have said, Sir, I hope it will appear, that a very high Degree of Persecution lurks under the incapacitating Clauses I have mentioned, and therefore, in my Motion for the Repeal of them, I hope I shall have the Concurrence of all those who are real Enemies to that Anti-christian Practice; but when I consider the Regard and the Reverence that is due to the Sacrament of the Lord's Supper; when I consider it as a holy Institution established by *Christ* himself, in Remembrance of his Death and Passion; an Institution that has been ever since celebrated by Christians with the utmost Devotion; a sacred Mystery which none ought to approach, without having first diligently tried and examined themselves, and a Mystery to which all are to be invited, but none to be compelled, I am surprized that it should ever have been turned to such a profane Use as that of qualifying a Man for being an Agitator to a Regiment, or the Bailiff of a little Borough. This, Sir, is perverting it to an Use for which I am sure it was never intended, and this Perversion has already produced, and will always produce, many and great Abominations. It is well known how many have become unworthy Partakers of the Holy Communion for the Sake only of intitling themselves to some lucrative Post or Employment; it is well known what terrible Misbehaviours and Indecencies some have been guilty of upon such Occasions, and what a Scandal has often been thereby given to all those who are truly devout or religious. This is so generally known, that it is now the common

A Practice in all the Churches of *England*, for the Priest or Curate to desire the legal Communicants, if any there be, I mean those who come there in Obedience to that Statute, to separate and divide themselves from those who come there purely for the Sake of Devotion; and, indeed, it were to be wished that none of the former should ever be allowed to communicate in the Presence of, much less at the same Table with any of the latter; for the former are often so well and so generally known to be unworthy Partakers, that their being admitted upon any Pretence whatsoever, gives great Offence to the truly Religious, and tends to subvert the Morals of the Vulgar, by lessening that Esteem and Reverence which they ought to have for the established Religion of their Country, and which wise Law-givers and Magistrates will always cultivate with all possible Care.

To preserve the Morals of the Vulgar, and for that End to preserve in them a true Sense of Religion, and a due Regard to that which is the established Religion of their Country, will, I say, Sir, be always the chief Aim of wise Lawgivers and diligent Magistrates; but by long and general Experience we know, that this is not to be done by penal Laws or the most cruel Persecutions. On the contrary, such Guaranteed for the established Religion of any Country, have always produced Pride, Ignorance, Luxury, and Oppression, among those of the Established Church, and invincible, nay, often victorious Enthusiasm, among those of the contrary Religion. Even in this Kingdom, we know, that penal Laws and Persecution raised so high the Torrent of Enthusiasm among us, that our Established Church was at last quite over-whelmed by the Dissenting Interest; and happy was it for our Church that those Enthusiasts destroyed our Constitution, as well as our established Religion; for if they had preserved the former, I am afraid the latter had never been restored. Yea, further, we know that since the Repeal of most of our persecuting Laws, the Dissenting Interest has daily decreased; and I am convinced those Remains of it that are now to be seen among us, are chiefly owing to what I may now call the Remains of those persecuting Laws, which are the Act now under our Consideration, and one other Act of much the same Nature; therefore as a Friend to our Established Church, I am for getting rid of those Remains of Persecution as well as those other persecuting Laws, which luckily for the Church, as well as for the Nation in general, we got rid of by the Toleration Act passed in the Reign of the late glorious K. *William*.

G With regard to the Peace and Unity of our People, I must say, Sir, it is Matter of great Surprise to me, how the Legislature of any Country

Country could be prevailed on to annex temporal Rewards or Punishments to speculative Opinions in Religion. I can easily conceive how Doctors might differ in speculative Points of Divinity, as well as in speculative Points of Law, Phyfick, or Philosophy; and I know with what Vehemence a learned Doctor in either of those Sciences maintains his own Opinion, and with what Envy, Malice, and Rage, he pursues his Adversaries; but I cannot easily conceive what Reasons the Lawgivers of any Country could have, to adopt and establish the speculative Opinions of any particular Doctor in Divinity, while at the same Time they shewed a very great Indifference with regard to the speculative Opinions of the Doctors in all other Branches of Literature: The Cause of this different Behaviour in our ancient Lawgivers, I say, I cannot well comprehend; but whatever may have been the Cause, if they thereby intended to establish an Uniformity of Opinion with respect to religious Matters, Experience has shewn that they have been most egregiously mistaken; for the annexing of temporal Rewards and Punishments to speculative Opinions, has been so far from reconciling Men's Minds, and making them agree in any one Opinion, that it has rendered those of different Opinions in Religion, not only implacable, but most cruel and barbarous Enemies to one another; an Effect which has never been produced by Difference of Opinion in any other Science. In Law, in Phyfick, in Philosophy, there are, and always have been, Doctors of different Opinions; and among them too there have always been, I believe, some who would have gladly confuted their Adversaries by Fire and Faggot, especially when they found themselves overcome by fair Reasoning; but as the Law of no Country has as yet thought fit to interpose in those Disputes, we find the Followers of these Doctors have generally argued the Matter very coolly, and when the Dispute was over have parted as good Friends, as they met. This has hitherto been the Case in all Sciences except Divinity; but if we should make a Law for punishing those who did not agree with the Newtonian System of Philosophy, or for rendering all such incapable to hold any Post or Office in our Government, I am persuaded we should have, in a few Years, great Numbers of our People who would be ready to sacrifice Life and Fortune in Defence of the Aristotelian or the Cartesian System of Philosophy: Nay, if any such Law were made against all those who did not believe that the three Angles of every Triangle, are equal to two Right Angles, I make no Doubt but that this plain Demonstration would be most violently opposed by great Numbers of Men in the Kingdom; for when the Passions of Men are stirred up by temporal Rewards and Pun-

nishments, the most reasonable Opinions are rejected with Indignation, the most ridiculous are embraced with a frantic Sort of Zeal, an Enthusiastical Sort of Adoration. Therefore, Sir, if we have a Mind to establish Peace and Concord among our People, if we have a Mind that the soft Voice of Reason and true Religion should be generally heard, we must allow Men to judge freely in Matters of Religion, and to embrace that Opinion they think right, without any Hopes of temporal Rewards, and without any Fears of temporal Punishments.

A As to our Trade, Sir, the Advantages we have reaped in that Respect by the Toleration Act are so apparent, that I shall not take up your Time with enlarging upon that Subject; but in order to retain those Advantages, and to improve them as much as possible, I shall beg Leave to move, that Leave be given to bring in a Bill to repeal, &c. (as above)

B The Answer was to this Effect, viz.

C Sir, As I have in all my Conduct hitherto appeared to be an utter Enemy to all Manner of Persecution, I hope my disagreeing with this Motion will not be looked on as any Sign of my having changed my Opinion, or of my having any Intention to alter my Conduct for the future: So far otherwise, Sir, I have still, and I hope shall always have, as tender a Regard for the Dissenters of all Sects and Denominations, as any Man can have who is a true Member of the Church established by Law. As a sincere and unfeigned Member of the Church of England I must and I do wish that all the Dissenters in the Kingdom could be gained over, that all his Majesty's Subjects could be prevailed on to become Members of that Church of which his Majesty is upon this Earth the supreme and only Head; but tho' I wish for this happy Event with as much Ardor as I can wish for any Thing, yet I shall never be for attempting the Accomplishment of that Wish by any Means or Methods that have the least Tendency towards Persecution, or towards doing a real Injury to any Man whose tender Conscience will not allow him to embrace that which is the established Religion of his Country: For all such I shall continue to have a Compassion and a real Concern; because I think it a great Misfortune for a Man to be of any Opinion which is singular, or which is different from that of the Generality of his Countrymen; and since I look upon this Difference of Opinion as a Man's Misfortune and not his Crime, I shall never be for subjecting him, upon that Account, to any Punishment or Persecution.

D But, Sir, the Words Persecution and Punishment have, in my Opinion, been very much mistaken by the Hon. Gentleman who

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made you this Motion, and by all those who have spoke upon the same Side of the Question; for according to the Meaning they have put upon these Words, there could be no such Thing as an established Church, or established Religion in the World, but what must be deemed guilty of persecuting and punishing all those who differ from it; and yet those Gentlemen will, I believe, grant, that in every Society, there ought to be an established Religion, or a certain Form of Church Government and publick Worship established by the Laws of that Society; therefore we must find out a Meaning for those Words, different from that which they have put upon them; and the true Meaning may, I think, be easily found out from the Practice of this and some of our neighbouring Nations.

As there is in every Society a certain Constitution or Form of Government established, I hope it will be granted, that it is the Duty of every Man of the Society to support and preserve that Constitution and Form of Government as long as he thinks it the best that can be established; and on the other Hand, if there be any Man, or any Set of Men, who are convinced that a different Form of Government would render the Society more happy and powerful, I believe it will likewise be granted, that it is the Duty of all such Men to endeavour in a peaceable Way at least, to bring about an Alteration; these two Duties therefore being altogether inconsistent, nay even destructive of one another, it is absolutely impossible for the one Set of Men to do their Duty, without laying the other Set under some Hardships: When those Hardships are no greater than what are absolutely necessary for the End intended, they are just and reasonable, and such as those who are subjected to them, ought not to complain of; but when they are greater than what are necessary, they then begin to take and to deserve the Name of Oppression, and according to the Degrees of this Excess, the Degrees of Oppression are always to be computed. In this Kingdom we know there is a Set of Men who think it their Duty to endeavour to bring about an Alteration of our present happy Establishment, I mean our Non-jurors; who for that very Reason are excluded from all Posts and Places in our Government, which is certainly a Hardship upon them; but I am sure it cannot be called an Oppression; nor can this Exclusion with respect to them be called a Punishment.

Now, Sir, with respect to the established Religion of any Society, it is the very same; for as there must be in every Society, an established Religion, it is the Duty of every Man of the Society to support and preserve the established Religion as long as he thinks it the best that can be established; and if there be in the Society any Man, or any

Number of Men, who think that the established Religion is idolatrous, or inconsistent with Christianity, it is certainly their Duty to endeavour, in a peaceable Way at least, to bring about an Amendment or Alteration; so that if the former Set of Men do their Duty, they must take Care to prevent its being in the Power of the latter to do theirs; the necessary Consequence of which is, that the latter must be laid under some few Hardships: When those Hardships are no greater than what are absolutely necessary for preventing its being in their Power to bring about the Alteration they are in Duty bound to attempt, the Hardships, whatever they may be, are just and reasonable; but when they exceed what are absolutely necessary, they then begin to be called Persecution, and till then they ought not to be called so.

Having thus, Sir, established what I take to be the proper and the only Meaning of the Word Persecution; I shall take Notice that if there be a Set of Men in this Kingdom who think the Doctrines of the established Church inconsistent with Christianity, or the Ceremonies of our publick Worship idolatrous, it is their Duty as Christians to attempt to bring about an Alteration in our established Religion, and they certainly will attempt it as soon as it is in their Power; nay with all Deference to the Hon. Gentlemen who have spoke upon the other Side of the Question, for all of whom I have the greatest Esteem, I must look upon this very Motion as a Step to, or rather a Beginning of that Attempt; but as I am a Member of the Church of England, and think it the best Religion that can be established, I think it my Duty to prevent its being ever in the Power of such Men to succeed in any such Attempt; and for this Purpose I think it absolutely necessary to exclude them from any Share in the executive Part of our Government at least; because if the executive Part should once come to be generally in their Hands, they would very probably get the legislative Part likewise, from which Time it would be in vain to think of preventing, in a peaceable Manner, their doing whatever they had a Mind, and it must be presumed they would have a Mind to do what they thought themselves in Duty bound to do. To exclude a Man from a profitable Post or Employment I shall admit to be a Hardship upon the Man so excluded; but as it is absolutely necessary for the Preservation of our established Church, to exclude those who think it their Duty to destroy it from any Share in the executive Part of our Government, therefore this Exclusion can no more be called Persecution, than it can be called Oppression, to exclude Nonjurors from any Share of our Government executive or legislative, nor can such Exclusion be deemed a Punishment in the one Case any more than in the other.

In the supposed Case of a brave Dissenter's being advanced to the Command of a Regiment, I shall grant that it would be a great Hardship upon him to be turned out of his Command, and to be exposed to a starving Condition, upon his Return to his native Country; but the same Case may be supposed with respect to a *Roman Catholic Gentleman*; yet there would be no Persecution in either Case; because the excluding of all such Men from any Command in our Army, especially here at home, is, I think, absolutely necessary for the Preservation of our Constitution in the happy State it is in at present; Nor could such an Exclusion be called a Punishment upon the Man so excluded, no more than it can be called a Punishment upon a Man of five Foot and a half to be excluded from being a Soldier in the Guards; for neither of these Exclusions proceeds from any Crime or Fault in the Man, it being as impossible for a Man to alter his Opinion when he has a Mind, as it is to add two or three Inches to his Stature when he has Occasion for it; but as the latter becomes necessary for the sake of preserving the Beauty and Symmetry of a Regiment, so the former becomes necessary for the sake of preserving the Beauty and Symmetry of a Society.

The Argument raised from the supposed Abuse of the blessed Sacrament of the Lord's Supper, is founded upon a Fact which I cannot admit; for as there is nothing in this Law that can compel the Admission of an unworthy Person, as the Ministers of our Church may refuse to admit any Person to that Sacrament who does not devoutly and humbly desire it, or for any other lawful Cause, * I must presume no unworthy Persons are admitted; or at least if there be, it does not proceed from any Fault in this or any other of our Statutes, but from the criminal and irreligious Neglect of the Minister who admits them.

As to the Unity and Peace of our People, I am persuaded, Sir, the Repeal of this Law and another which I believe is likewise intended, would raise most terrible Disturbances and Confusions; for with resp. & to all Posts and Employments that go by Election, we should have all the Dissenters combining closely together, to bring in their Friends, which would of course breed many Riots and Tumults. And as to our Trade, it depends so much upon the Peace and Tranquillity of the Nation, that if we have a Mind to preserve it, we ought not to make any new Regulation or repeal any old, if by so doing we run the Risque of raising Heart-burnings and Jealousies among our People.

To this it was replied in Substance as follows, viz.

Sir, I shall take up but a very little of your Time in replying to what has been said for in my Opinion, the Arguments for the Motion have been not only confirmed but enforced by what has been said in answer to them.

If the Hardships imposed upon the Dissenters by the Law under our Consideration are greater than what are absolutely necessary for preventing its being in their Power to destroy the Established Church, from what has been said of the other Side of the Question, it must be granted, that this Law is a persecuting Law: Now, Sir, to determine this Question in the *Affirmative* we need have recourse to the Practice of no other Nation but Scotland:

A With regard to that Nation, we know that the Presbyterian Religion, which is here one of our dissenting Religions, is there the Established Church, and what is here our Established Church, is there a dissenting Religion; yet the Established Church in *Scotland* have never thought it necessary, nor does it appear to be necessary, for their Preservation, to exclude their Dissenters from all Posts and Employments in the executive Part of their Government, nor have they any Law for such a Purpose; but on the contrary, some of their Judges and Magistrates, and many of those

C in Posts and Employments in that Kingdom, go openly, and in the most solemn Manner, to the Episcopal or Church of *England* Meeting-Houses; and tho' this Practice or Indulgence has been continued for many Years, and continues to this Day, yet the Established Church in that Country is so far from being in any Danger of being overturned by what is there the Dissenting Interest, that the former is daily gaining Ground upon the latter; which evidently shews the great Weight and Effect of a legal Establishment, with respect to Religion, when the Minds of Men are not irritated by any unnecessary Hardships put upon them. I could likewise instance *Holland*, and several other Protestant Countries,

E to shew that rendering Dissenters incapable of serving the Crown in any Post of Honour, Trust, or Profit, is a Hardship put upon them, which is so far from being absolutely necessary, that it is not at all necessary for preserving the Established Religion of any Country; and therefore this Hardship must in the strictest Sense be called Persecution, even according to the Meaning put upon it by the Hon. Gentlemen who have spoke upon the other Side of the Question.

With respect to *Nonjurors* and *Roman Catholics*, the Hardships put upon them are not for the Sake of a Scruple of Conscience in any Matter of a religious Concern, but because they are Enemies to the State, and to the present happy Establishment; but I am surprized to hear it said that the rendering of

* See Statute 1 Edward VI, Chap. 1.

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them, or the Dissenters, incapable of holding any Post of Honour, Trust, or Profit under the Crown, is no Punishment; when I consider that that very Punishment has often been inflicted by Parliament, as one of the greatest Punishments they could inflict upon Crimes of a very high Nature: Surely this legal Incapacity must be looked on as a Punishment upon both, with this Difference tho', that upon those who declare themselves *Nonjurors* or *Roman Catholicks*, it is with great Justice inflicted, but upon Dissenters it is inflicted without any Cause or Occasion, no Party among them having ever yet been, nor, I believe, ever will be suspected of being Enemies to our present Establishment, unless the rejecting of this Motion should make them so. I am sure every Gentleman that hears me must grant that there is some Difference between a Capacity of being a Soldier in the Guards, and a Capacity of holding any Post or Preference under the Crown: The Guards are the King's own Servants, and every Man may chuse what Sort of Servants he has a Mind; therefore no Man has a Title to any Capacity of being a Soldier in the Guards; but every Subject has a Title to a Capacity at least of sharing in the Honours and Preferments of his Country, and that Capacity ought not to be taken from him but by way of Punishment for some very high Crime or Misdemeanour; for it is a Punishment so dishonourable and severe, that we never find it inflicted by our Laws upon Crimes of an ordinary Nature.

I shall grant, Sir, that a Minister of the Established Church is not by any express Words in this Act ordered or compelled to administer the Sacrament to an unworthy Person, who desires it only for the Sake of enabling himself to hold a beneficial Employment; but if a Minister of the Church of England should refuse to administer the Sacrament to any Person, upon such Occasion, and that Person should by Means of such Refusal lose his Post, or only a Year's Salary, he might bring his Action at Common Law upon the Statute of Edward I. against such Minister, and would recover great Damages, if the Court of Common Law should not approve of the Minister's Reasons for refusing to administer the Sacrament to the Plaintiff: Whereas, before the receiving of the Sacrament was made a Qualification for a civil Employment, no such Plaintiff could have recovered any considerable Damages, nay I doubt if he could have recovered any Damages at all; for he could not probably have proved any temporal Damage by his not receiving the Sacrament when he desired it, and I do not see how a Jury could pretend to put a Value upon the spiritual Damage he might pretend to have received. Those Laws therefore, which have made the receiving the Sacrament a Qualification for a civil Employment, have

A subjected all the Clergymen of the Church of England to a very great Difficulty, because they are by those Laws, and by those only, subjected to the Danger of having such Damages given against them as may ruin them and their Families for ever, in case they refuse to administer the Sacrament to a Person whom they know to be a most profligate and impudent Sinner; for this a Minister of our Church may be fully convinced of, and yet it may be impossible for him to make the same appear to a Jury.

B To pretend, Sir, that if those incapacitating Laws were repealed, the Dissenters would combine closely together in all Elections, and that these Combinations would occasion terrible Disturbances, is contradicted by Experience in England as well as Scotland; for tho' many of the Dissenters in England do communicate sometimes with the Established Church, and in Consequence thereof become Candidates, from Time to Time, for almost every elective Civil Post in the Kingdom; and tho' the Dissenters do generally join pretty unanimously upon such Occasions, I believe more unanimously than they would do if these Laws were repealed, yet we find it never produces any Disturbances: And in Scotland where the Dissenters from their Established Church are under no incapacitating Laws, we find that the Disputes about Elections never produce any Disturbances between the two religious Parties in that Kingdom, altho' it must be granted, that the People of that Country are as violent in all their Desires, as bold and enterprising in their Designs, and as turbulent under Disappointments, as the People in any Country, I believe, upon the Face of the Earth. We must therefore from Experience conclude, that the Repeal of those prosecuting Laws, which, to our Misfortune, are still in force in this Kingdom, would confirm rather than disturb our present Tranquillity; and it would certainly increase our Trade, because it is not to be questioned but that a great many more rich foreign Merchants would come over and settle among us, if they found they could enjoy all the Privileges of Englishmen without changing their Religion: Whereas, while those Laws remain unrepealed, a few foreign Tradesmen and Mechanicks who aspire to no Honours or Preferments may perhaps come over; but rich and opulent foreign Merchants will neither come nor stay to settle their Families in this Kingdom, when they consider that neither they, nor their Posterity, can aspire to any Honour or Preference, unless they make a Sacrifice of the Religion of their Ancestors.

C At last the Question was put, which, upon a Division, was carried in the Negative, by 251 to 123.

D The principal Speakers in this Debate were, for the Question W——r P——r, Esq; Sir W——d

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W—d L—n, the L—d P—ib, Mr. A—n H—ts, S—l H—n, Esq; and against it were L—d N—l S—s, L—d V—t T—l, J—b D—rs, Esq; W—m S—n, Esq; Mr. C—r of the E—r.

On March 24. his Majesty came to the House of Peers, and gave the Royal Assent to the Bills mentioned in our Magazine for March, p. 357.

On the 26th, the H—se of C—ns resolved itself into a Committee of the whole House, to consider further of the Supply granted to his Majesty, and came to the following Resolutions, which were reported and agreed to on the 29th, *viz.* To grant to his Majesty, 1. The Sum of 22,944*l.* 14*s.* for making good the Deficiency of the general Fund. 2. The Sum of 24,570*l.* 2*s.* 7*d.* to make good to the Sinking Fund, the like Sum paid out of the same, for Interest on the Million lent on Credit of the Salt Duties, for the Supplies of the Year, 1734, pursuant to a Clause in an Act of Parliament passed in the 7th Year of his Majesty's Reign. 3. The Sum of 10,000*l.* towards the Maintenance of the British Forts and Settlements, belonging to the Royal African Company of England on the Coast of Africa. 4. The Sum of 10,000*l.* towards settling and securing the Colony of Georgia in America. 5. The Sum of 11,485*l.* 4*s.* 5*d.* to make Satisfaction to Humphrey Bell (the surviving Assignee of the Estate and Effects of William Ellins and Edmond Farrington, against whom a Commission of Bankruptcy issued) Suitor of the Court of Chancery in 1726, for so much of his Debt and Demand from one of the Masters of the said Court, as then remained unsatisfied. 6. The Sum of 30,167*l.* towards the Buildings, Rebuildings, and Repairs of his Majesty's Ships for the Year 1736.

With these Resolutions the Committee of Supply was concluded for last Session; and on April 30. the House resolved itself into a Committee of the whole House to consider further of Ways and Means for raising the Supply granted to his Majesty, when they came to the following Resolution, which was on May 3. reported and agreed to by the House, and a Bill ordered to be brought in upon the same, *viz.* That the several additional Stamp Duties granted by an Act passed in the 12th Year of his late Majesty's Reign, intitled, *An Act for the Relief of the Suitors of the High Court of Chancery,* should be continued from Aug. 2. 1742, to Aug. 2. 1746, in order to raise the Sum of 11,485*l.* 4*s.* 5*d.* to make Satisfaction to Humphrey Bell (the surviving Assignee of the Estate and Effects of William Ellins and Edmond Farrington, against whom a Commission of Bankruptcy

was issued) Suitor in the Court of Chancery in 1726, for so much of his Debt and Demand in that Year due from John Bennet, Esq; one of the Masters of the said Court, and then remaining unsatisfied. With this Resolution the Committee of Ways and Means concluded for last Session; and the Bill ordered in upon this last Resolution, was accordingly brought in, and passed into a Law.

On May 5. his Majesty came to the House of Peers, and gave the Royal Assent to the Bills mentioned in our Magazine for May, p. 275, 276.

Bill for explaining the Bribery Act brought in, and DEBATE upon it.

On May 11. H—y A—r H—t, Esq moved the House for Leave to bring in a Bill, to explain and amend so much of an Act made in the 2d Year of his present Majesty's Reign, intitled, *An Act for the more effectual preventing Bribery and Corruption in the Election of Members to serve in Parliament,* as relates to the commencing and carrying on of Prosecutions grounded upon the said Act; which was accordingly granted, and the said Mr. Henry Arthur Herbert, Mr. Richard Lloyd, Mr. Knight and Mr. More, were ordered to prepare and bring in the same: Accordingly a Bill for this Purpose was presented to the House the same Day, and read a first Time; next Day it was read a second Time; and was passed thro' the Committee, and reported and agreed to by the House the Day after; and on the 14th was read a third Time and passed.

The Reason assigned for bringing in and passing this Bill was, That by a Clause in the Act against Bribery and Corruption, it is enacted, that no Person shall be made liable to any Incapacity or Penalty by the said Act imposed, unless Prosecution be commenced within two Years after the Crime committed, and in Case of Prosecution within that Time, unless the same be carried on without wilful Delay; which Limitation, 'twas said, was very necessary, in order to quiet People's Minds, and prevent false or vexatious Prosecutions; but that the same was not sufficiently full and explicit, because the suing out of an Original was a Commencement of a Prosecution, which might be done without letting the Party prosecuted know that any such Prosecution was commenced; and the Limitation being saved by the suing out an Original in this private Manner, Prosecutions upon that Act might hang up privately against Men for many Years after the supposed Offence, which would be of the most dangerous Consequence, and therefore it was necessary to bring in a short Bill for explaining and amending that Clause, so as to make it necessary to give the Party prosecuted Notice of that

that Prosecution within the two Years.

As this Amendment was generally thought to be necessary, the Bill was not at first objected to; but when the Bill came to be examined in the Committee, Sir, *J—n H—nd C—n* and others took Notice, That upon a serious Attention to that Bill, they were not at all surprised to see it brought in so late in the Session, and passed in such a Hurry; for as it was drawn up with a Retrospect, it was really an Act of Indemnity for almost all the Bribery and Corruption Men might have been guilty of at the last general Elections for Members of Parliament, and might very probably be an Injury to several private Men, who had already done all that was made necessary by that Act for intitling themselves to carry on Prosecutions against Offenders; for as the two Years since the former Election were then just expiring, if a Gentleman had just sued out 40 Originals against 40 different Offenders, and had thereby intitled himself to proceed against them with his Convenience, he would be entirely disappointed, and lose the whole Expence he had been at; because the two Years would very probably be expired before he could hear of this Act, and then it would by this new Act be past Time for serving even those very Originals which he had regularly sued out in the Terms of the former Act; therefore they hoped the Committee would amend the Bill, so as to prevent its having a Retrospect, or doing an Injury to any Gentleman who had been guilty of no wilful Delay or Omission, as the Law then stood; for it was very probable that great Numbers of Originals had been sued out, but not served or prosecuted, because the Prosecutors would in common Prudence wait till a few Cases of the same Nature had been determined, in order that they might from thence learn how to proceed.

To this it was answered in general, That whatever Lawyers might mean by a Prosecu-

tion commenced, the Meaning of the Legislature when that Law passed, certainly was, that no Prosecution should be understood to be commenced, unless the Person prosecuted had Notice of it, within the Time limited, by an Arrest, Summons, or some other legal Method; and as this was the Meaning of the Legislature, they believed most Gentlemen had taken it in that Sense, for they had never heard of any Prosecutions commenced in the other Manner, nor could any Gentleman in that House give an Instance where a Prosecutor had sued out a Number of Originals without summoning or arresting the Persons against whom they were sued out; from whence it was to be presumed, that if there were any such Instances, they were so rare as not to deserve the Notice of that House.

Upon this the Bill was agreed to without any Amendment, and passed accordingly.

C On Thursday, May 20. his Majesty came to the House of Peers, and, besides the Bills mentioned in our Magazine for May, p. 277. gave the Royal Assent to, An Act to prevent the Listing his Majesty's Subjects to serve as Soldiers, without his Majesty's Licence. An Act for further encouraging and regulating the Manufacture of British Sail-cloth; and for the more effectual securing the Duties now payable on foreign Sail-cloth imported into this Kingdom. An Act to render the Law more effectual for preventing the Importation of fresh Fish, taken by Foreigners; and to explain so much of an Act made in the 13th and 14th Years of the Reign of K. Charles II. as relates to Ships exporting Fish to the Ports of the Mediterranean Sea; and for the better Preservation of the Fry of Lobsters on the Coasts of Scotland.

After which his Majesty made a most gracious Speech to both Houses of Parliament, and pragu'd them. (See this Speech in our Magazine for May, p. 278.)



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